

Civil Society and Power of Professional Groups in China: A Case Study of Beijing Municipal Lawyers' Association

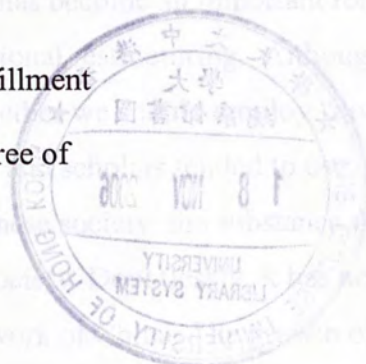
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**A Thesis Submitted in Partial Fulfillment
of the Requirements for the Degree of**

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in

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Abstract

My thesis concerns the development of the civil society in China. I did field work in the Beijing Municipal Lawyers' Association (BMLA) to explore how much power it enjoys and what role it plays as a professional group in the process of leading the legal professionals to embark on the route of professionalization. Based on the study of this organization, I hope to have a bird's eye view of the developmental situation of social organizations and the challenges they are facing in China.

I chose this field to do my work because the civil society has become an important force in China, as it is on the way of economic reform and institutional restructuring. Although there have always been discussions and debates about whether we should employ "civil society"- a Western concept, to study the Chinese reality, and scholars tended to use different translations to make the concept "fit" to the Chinese society, the substance that the concept captures already has taken roots in Chinese society. Doubtlessly, it has now occupied a prominent position in the whole social framework of China. The growth of such kind of social force in an authoritarian society like China deserves our attention. Hence, I hope my research on this specific organization could provide some fresh understanding of the role that this social force plays.

I chose the BMLA as my target of study mainly because in the numerous researches about the Chinese civil society, few are devoted to the study of the professional groups. Professional associations in China were mostly built up by the government after 1949, and handed to the professionals themselves since the economic reform. However, these organizations could hardly get rid of the governmental background and are executively supervised by the government. Therefore, scholars tend to think they are pseudo NGOs and cannot play a significant role in the society. I think things are more complicated than that. In my research, I want to go in details to explore the relationship between associations and the governmental units. My questions are how much power the association has got from the government, and what kinds of power they are.

In doing my research I employed a qualitative method. I did an internship in the BMLA, obtained some primary and second-hand materials and conducted interviews with the board members and the staff in the secretariat.

Through an examination of the powers the BMLA has in organizing professional education, making codes and regulations, protecting members' autonomy, building community culture and participating in social activities, I have come to the conclusion that the BMLA is gradually getting power from the government, which makes it possible to play a crucial role in leading the lawyers on the route of professionalization. However, the power that the BMLA enjoys is limited to the executive level, and to some extent, it may be extended to decision-making level, but the government controls the agenda-setting power, which becomes an obstacle that holds back the development of the BMLA and the legal professionalization process..

內容摘要:

本文旨在探討中國公民社會的發展現狀。筆者通過對北京市律師協會的實地研究探討該組織作為行業協會,在引領該行業走向專業化中扮演的角色和擁有的權力,從而評估類似社會團體的現狀及發展中所面臨的問題及挑戰。

筆者之所以選擇此領域進行研究,是因為在中國社會正在經歷經濟改革和制度上的變革,而在這一過程中,公民社會被看作了一種不可忽視的力量。無論學術界如何評價這一西方概念在中國現實中的運用,或怎樣更換對這一概念的不同的翻譯方式,此概念形容的這個社會力量已存在于中國社會之中,並不容置疑地在整個社會架構中顯現出了其特殊的地位。本文在第一個總括章節及之後的文獻回顧中都將介紹公民社會在中國的發展情況。這樣一種社會力量在專制主義依然為主導的中國社會之發展顯然是值得關注的。因此筆者希望通過對眾多社會組織中的一個特殊例子進行較為細緻的研究,以求對此社會力量在社會中所扮演的角色有一個初步的認識。

筆者選擇北京市律師協會這一個行業組織主要是因為在對中國公民社會的研究中,對行業組織的深入研究是為數不多的。中國的行業組織大部份為建國初期官方成立,改革後逐步交由行業內人士自行管理,但依然與政府機構難脫干系。這樣的組織被研究者認為是偽社會團體,沒有鮮活力量,基本上依附與政府機構。筆者希望通過對律師協會的深入研究,來探討這樣一個由官辦性質轉為律師自律性組織的行業協會,究竟與政府之間有怎樣的張力,及在引導北京律師走向專業化的過程中享有多少權力,這些權力又停留在哪些層面上。

本文採用了定性研究法。筆者以實習身份在研究對象組織中進行了兩個月時間的實地調查,在這一過程中收集了原始及部份二手資料,亦訪問了數名該協會理事會的理事、常務理事及秘書處領導和工作人員。

通過對律師協會在律師專業教育、執業自主性、協會章程制訂、職業社區的建立以及社會服務的開展五個方面的研究和探討,筆者認為作為職業組織,律師協會雖然並未完全脫離其官辦的形象,但是在其運作過程中,已經掌握了越來越多的權力。在引領北京律師業走向專業化的過程中,律協扮演著日益重要的角色。但是,從文章所介紹事例可以看出,律協的權力大部份停留在執行層面,在決策上也開始擁有一定的權力,但在制訂議程方面,其行政指導單位北京市司法局掌握著最終的權力。這一點嚴重限制了律協的發展,亦形成了北京律師業走向專業化的阻礙力量。

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CHAPTER ONE INTRODUCTION

This research concerns the understanding of civil societies in China. It looks into the power relations between the state and the civil societies through a case study of a particular type of civil society, namely the association of the legal professionals. The association of the legal professionals as a social and professional organization has witnessed considerable growth in China in last several decades. In the reform era the association of the legal professionals serves as a platform for law firms and individual lawyers in China to share common interest, exchange ideas and support each other in the professionalization process and in the development of the legal profession. As has been pointed out by some scholars, in China's political context social organizations like the association of the legal profession are heavily controlled by the state to the extent that they could hardly function as true civil societies. Granted that there is some truth in that view, it should not prevent us from taking a closer look at the complexities and many faces of such organizations. A more careful study may reveal that the relations between the state and the civil societies like the association of the legal professionals are more complicated than mere order-giving and order-taking pattern or total dependence. Professional associations in China may have more powers than what most scholars have expected.

The association of the legal professionals in China is officially called All China Lawyers' Association (ACLA) which has a large number of local members. The size and locations of the ACLA and its members deter any attempt to study them systematically and wholly. Therefore I have chosen the Beijing Municipal Lawyers' Association (BMLA) as my target for study. I have chosen the BMLA for a number of reasons. First, it is one of the oldest professional organizations in China, has longer history and more sophisticated.

Secondly, located in Beijing, the capital of China, the BMLA is seen as the leader in the development of China's legal profession. Its suggestions and practice serve as models for the local associations of lawyers throughout China. Thirdly, the BMLA represents the cream of the legal professionals in China and its work reflects the most developed status of the mentality and the practice of the legal professionals. Last but not the least, for me the access to the BMLA is easier.

Here I want to stress that although the core chapters of this thesis are about how much power the association has while helping the lawyers go on the route of professionalization, my focus of this research is not professionalization itself. My interest is mostly in the power relationship between the legal professional groups and the Beijing Municipal Bureau of Justice.

It is my belief that this study is significant in several ways. First of all, as an in-depth case study, my research will provide comprehensive information and analysis to the whole study of development of civil society in post-reform China. Secondly, the conventional view holds that the associations of professions in China always lack power. According to most scholars, they are "Government-Organized Non-governmental Organizations" which are under the direct or indirect control from the state and the Party and therefore don't have much power and autonomy. My work shows that the fact is more complicated than it appears to be. These organizations may have more autonomy and power than we are ready to acknowledge. Thirdly, there is a lack of literature in China's civil society studies concerning the role the organizations play in the professionalization process. My study is hopefully filling in that gap.

The methodology employed in this thesis is mainly case analysis based on my fieldwork in the BMLA during the summer of 2004. It is a qualitative study, relying on first hand materials obtained through direct observation and interviews with the officials

of the BMLA and individual lawyers, and published as well as unpublished materials provided by the BMLA. In addition, it also relies on the second hand materials on the theoretical issues related to the topic and arguments of this thesis, for instance, the literature on civil society in the West and in China. The case analysis is also sometimes supplemented by other research methods such as logical and textual analysis, historical method and even comparative analysis. My focus of this study is about the power relationship between the civil society and the state. “Power” in this paper is seen as having different layers: agenda-setting power, decision-making power, and executive power. The analysis of power is put into a context of professionalization. This understanding of power is essential to this thesis, as it allows me to understand the phenomenon of power not as one total chunk of force, but as having different elements and faces.

Structurally, this thesis is divided into ten chapters. Following this introduction, Chapter 2 briefly surveys the literature on the topic done by previous scholars. As is defined by the research scope and the methodology of this thesis, the literature review focuses on four major separate but closely related aspects: the notions of civil society in the West, the Chinese understanding of the civil society in general, some major perspectives on power and the scholarship on the legal profession. Chapter 3 sketches and explains the methodology employed for the research. Chapter 4 sets out the background for understanding the nature and the role of the BMLA. It provides a brief history of the BMLA, its organizational structure and its functions. It also briefly introduces the Beijing Municipal Beijing Municipal Bureau of Justice, the professional supervisory department of the government. After these preparatory discussions the thesis moves on to its main concern in the rest of the paper. Chapter 5 begins the power analysis with the issue of professional education and training. It looks into the power relationships between the BMLA and its supervisory department of government, the Beijing Municipal Bureau of

Justice, in the professional education and training. It is found that the BMLA enjoys some decision-making power and executive power, but the agenda-setting power remains tightly controlled by the Beijing Municipal Bureau of Justice. The power relations vary from education to training. The BMLA seems to have more say in the on-job training programs than in the formal legal education process. Chapter 6 continues the power analysis by focusing on the code-making power of the BMLA. By law the BMLA has the power to make rules and regulations needed for managing the law firms and carrying out its activities relating to promotion of legal professional ethics and discipline. Such power to make rules, however, is not absolute. It is considerably constrained by previously made rules of the Beijing Municipal Bureau of Justice. The BMLA needs to solicit opinions of the Beijing Municipal Bureau of Justice before it can pass any rules. The chapter concludes that the rule-making power enjoyed by the BMLA is relatively autonomous, but not without restrictions. Chapter 7 then looks into the BMLA's role in protecting professional autonomy of the lawyers in Beijing. Through examination of several cases this chapter highlighted the dilemma the BMLA is facing in the particular political context of China: safeguarding the rights and interests of its members while respecting the government's interest. The BMLA is highly conscious of its responsibility in protecting its member's rights and interests, but when faced with the government's interest and pressured by the Beijing Municipal Bureau of Justice, its role melts. Chapter 8 discusses the power the BMLA has in promoting a common culture for the legal profession. The BMLA is given the power to promote the community culture and professionalism within the legal community. It has made use of this power to cultivate professional ethics among Beijing lawyers, fostering a tolerating culture that treats male and female lawyers equally and building up a professional image that deserves respect from the government and the populace at large. Chapter 9 deals with the power and autonomy the BMLA has in

participating social activities for the promotion of social good. Citing examples from recent years, the Chapter discusses the BMLA's concern with doing good for the society while doing well for the individual lawyers. Chapter 10 offers a reflective conclusion on the whole study, emphasizing the thesis that social organizations such as the BMLA, partially controlled by the state, does have extensive autonomy and power. Such autonomy and power proves to be significant in the relationship between the state and the civil society. In the promotion of social good and cultivation of a culture of civil society, the role of social organizations like the BMLA should not be ignored.

CHAPTER TWO LITERATURE REVIEW

Introduction

As my thesis addresses the relationship between the state and the civil societies by studying how much power a professional organization possesses, it is important that my literature review should cover several related fields. I tend to think that it is necessary to discuss at least four concepts: the concept of civil society in general, Chinese understanding of civil society, the concept of power and the concept of profession. Hence, my literature review consists of four parts. First, I presented a sketch of theoretical development of the concept of “civil society” in the West. Secondly, I looked into the discussion about civil societies in China. Thirdly, I traced the recent discussion of the concept of “power”. Finally, I reviewed the concept of “profession” and its relevance to the legal profession.

A. Civil Society

The term "civil society" can be traced back to the ancient Greek philosophers. Socrates, one of the greatest classical philosophers in the human history, first mentioned that people deserved a kind of good life, the fulfillment of which should rest on the construction of a *public area* where rational dialogue is possibly to be conducted. The notion of “public area” brought out the idea of a civil society. However, in classical usage civil society was equated with the state.

In European history the modern idea of civil society appeared with the separation of the state from the society in the 17th century. At that time, autocratic states began to be divorced from larger society and elevated to a special arena in which specialized politicians and political functions are highly concentrated. (Poggi, 1978:78) 。 The separation of the state from the society not only produced impersonal public state authority (Habermas,1989:19) , but also created a private sphere in which individuals pursue their interests (primarily economic interests) as private entities. The individual demand for a voice in affairs of state constituted a space between the closed realms of business and family and the larger realm of the state. Initially, this society appearing as a “private sphere” was insignificant for the political realm. However, through free associations among private individuals and discussions on publicly concerned issues and participation in the public realm, a “public realm” that transcends individuals gradually took shape. (Habermas, 1989; Taylor, 1995b) . In the meantime, this society has developed a distinctive identity of it and began to exert its influences on the issues relating to public policy-making. As Charles Taylor pointed out that through free associations the whole society could self-construct and self-coordinate , and even determine or influence the formation of the state policy to a considerable degree. (Taylor, 1995a:208)

Therefore, having noticed this new relationship between society and the state evolving, George W. Hegel, the famous German philosopher, developed the concept of civil society as a domain parallel to but separated from the state -- a realm where citizens associate according to their own interests and wishes, which conceptualization separated the civil society from the state, the market and the family. So civil society became a mediating area, a buffer zone between the state and the individuals. This new definition

broadened the scope of the concept of civil society. On one hand, it reflected the economic and political developments of the society at that time, and on the other hand, revealed the strong demands for liberty by people, as demonstrated in the American and French revolutions.

In the mid-20th century, civil society as an academic term was brought to the practical world. At that time, political philosophers turned their attention to the real economic and political change in the society. After the Second World War, the term was transformed into a public sphere of struggle against tyranny. Civil societies were the active groups fighting against dictatorship in Eastern Europe and Latin America. By that time, civil society became a strong weapon for the desire of democracy.

In the 1990s, the concept of civil society became known in both academic and practical world. It became a buzzword in politics and political science. The global trend toward democracy opened up space for civil society in formerly dictatorial countries around the world. So in both developed and developing countries, civil society is playing a crucial role.

However, even now, people do not agree on the boundary of the concept of civil society. What should be included and what should be excluded is still a problem in this field. The broader concept of civil society covers the whole society other than the government. The conceptualization of civil society has seen different emphasis. For instance, it has been described as referring to the space for private activities (market, family, etc.); a public realm gradually emerged out of private activities (from Cafeterias in the early period to the political parties and mass media much later) ; a society external

to and independent of the state; and a highly autonomous society (civil) , etc.¹ These are all hot topics for the scholars. To make the concept clearer, I tend to agree that first of all, families should not be included into the scope of civil society because they are more private than a public sphere which the civil society refers to, and secondly, the market has developed sophisticatedly and the utility and interests the market is basing on could not match the virtue of “civil society”, so neither family nor the market should be included in the concept of civil society (Cohen & Arato, 1999).

B. “Civil Society” in China

1. The Chinese Understanding of “Civil Society”

Here one question that has to be answered from the very outset is whether it is justified to use civil society, a concept developed in Western cultures, to study the Chinese society. In fact there have been many such studies. Some scholars, employing empirical research methods, have looked into the unofficial organizations emerged in the late Qing Dynasty to see whether any equivalent to the Western style civil society did appear in China. (Rowe, 1993) Others completely deny the suitability of using the concept of civil society to analyze the particular issues in Chinese culture. For these scholars the relations between the unofficial organizations existing in the Chinese society and the government are different from those existing in Western societies. The concept of civil society is not a significantly useful one for understanding and analyzing the Chinese society. Concepts such as the “public sphere” or “third realm” may be more useful. (Huang, 1993).

¹梁治平, “‘民间’、‘民间社会’和‘CIVIL SOCIETY’——CIVIL SOCIETY 概念再检讨”, <<当代中国研究>>, 第一期, 2001

I myself tend to agree with what Timothy Brook and B. Michael Frolic has written in 1997 that civil society is a model, not a reality. The ideal type of civil society, in which individuals made rational decisions about the common good as they link society and the state together through bonds of civility and public discourse, does not exist, either in the western or in the eastern world. In the realm of politics, it expresses a desire for the way in which societies, states, and citizens ought to interact, not how they actually do. Thus, civil society serves as a heuristic device for thinking through certain changes that China is currently undergoing, but neither reproduces nor fully explains that reality. (Brook, Frolic, 1997)

In fact, many native Chinese scholars have used the concept of civil society as an analytical tool for the study of the development of Chinese politics and culture. But as to what exactly is civil society, scholars have different views. This can be seen from the Chinese translation of the term. There are three ways to translate the term “civil society” into Chinese: “shimin shehui”, “gongmin shehui” and “minjian shehui”.² According to Liang (2001), each of these three translations emphasized one aspect of the concept of civil society.

The concept of “Shimin”(市民) emphasizes close historic connection between the bourgeois citizen and the civil society and the “private aspect of it. The concept of “gongmin” (公民) underscores the role the public plays in the civil society: freely exchanging views under the protection of law to form “public opinion”. The concept of “minjian” (民间) reflects the idea that the civil society coexists with the state, or at least not directly controlled by the state. The term “gongmin” emerged relatively late. It

²梁治平, “‘民间’、‘民间社会’和‘CIVIL SOCIETY’——CIVIL SOCIETY 概念再检讨”, <<当代中国研究>>, 第一期, 2001

probably entered the Chinese political lexicon around the beginning of the 20th century. Although since then, the concept of “gongmin” has played, and continues to play, various roles in the development of Chinese politics, it by no means has anything to do with the political and social life in ancient China.

“Shimin” and “minjian” are so-called local concepts, which had their origin in classic Chinese and had been used since ancient times without much change in their meaning. However, in both classical and modern usages, the two terms have very different meanings. “Shimin” refers to a specific category of persons who are city dwellers while “minjian” refers to a broader social space, that is, a huge world in which common people (“min”) reside and participate in activities.

Seen from the perspective of the relations between the state and society, one of the most significant consequences of the economic reforms since the 1980s is the rebirth of the “minjian”. With the continuing shrink of the command economy and the withdrawal of the state from several social areas, the situation in which the state monopolized almost all social resources gradually changed.

First in the countryside and then in the cities people began to have more choices and more space. Naturally, what emerged with the expansion of the social space in this period are not only old social organizations and social behavior, but also modern forms of social organizations: various intermediate social organizations, academic associations, research associations, professional groups and the associations of varied sizes and nature that are closely related to daily life. (Pei , 1998) 。³ These social organizations are different from old social organizations like the clan or new social organizations established after the 1950s, such as the “people’s groups” or “mass organizations”. The new social organizations, even though, branded with the name of “people” or “mass”,

³ Pei 的分类统计主要集中在 1978—1995 年间正式申请、登记的社会团体。

were actually only extensions of the official organizations. For some scholars, the emergence and development of the intermediate social organizations are at the center of the contemporary Chinese civil society. (White, Howell and Shang, 1996: 2-6) 。

2. The development and the recent status of the civil society in China.

The development of civil society in China can roughly be divided into three major stages. The first stage is before the founding of the PRC, the second stage is from the founding of the PRC to the beginning of the economic reform era, and the last stage is from the year of 1978 up to now. ⁴

The first stage covers the period before the founding of the PRC in 1949. In that stage six major types of nongovernmental (min jian) organizations existed in China: guilds, reciprocal organizations, academic organizations, political organizations, literary and artistic organizations, sects and secret societies. In 1932 the Nationalist Party promulgated “Revised Organizational Regulations for Mass Organizations” (xiuzheng minzhong tuanti zuzhi fangan) , which classified mass organizations into the following categories:

Associations of Farmers, Associations of Fishermen, Trade Union, Business Associations, Professional Association of Industries and Businesses, Student Unions, Women’s Societies, Cultural Associations, Religious Societies, Public Interest Groups, Association of Free Professionals and other mass organizations approved by the Nationalist central government. The same regulations stipulated the principles that mass organizations must observe and the required registration procedures, emphasizing the absolute obedience of

⁴王名, 刘国翰, 何建宇, <<中国社团改革>>, 第一章, 2001

the mass organizations to the Nationalist Party and the principle of unified central control. In 1942 the governments in the revolutionary border areas under the control of the Chinese Communist Party issued Methods for Registration of Mass Organizations in the Shanxi-Gansu-Ningxia Revolutionary Border Areas (<<陕甘宁边区民众团体登记办法>>), which provided the basic principles for managing and fundraising of the resources of the mass organizations, principles on public interest and registration of the mass organizations. The mass organizations at this stage were characterized by their being organized from the grassroots and their political nature. They were very active at that time.

The second stage covers the period between the founding of the PRC in 1949 and the Third Plenary Session of the Eleventh Congress of the Chinese Communist Party in 1978. The new government made choices and reorganized the mass organizations based on the government's own value judgments. For instance, some social groups, which had more apparent political tendency, such as the "Jiu San Society" (九三学社), were changed into political parties.

In the past such organizations were self-defined, with some explicitly adopting the form of a political party and others having no obvious preference. Under the system of political consultation they were classified as political parties in order to distinguish from other social organizations, whereas those organizations which were labeled "feudal organizations" or "reactionary organizations" were outlawed. By doing that the government has effectively made the rest of the Chinese associations and societies non-political.

In September 1950 the then Council for Administrative Affairs enacted Provisional Methods for the Registration of Social Organizations (<<社会团体登记暂行办法>>), which contained 17 articles for distinguishing the types of social groups, items for

registration and penalties. The same Methods classified the social groups into these categories: mass groups of the people, social groups for public interest, literary and artistic groups, academic research groups, religious groups and other social groups organized in accordance with the laws of the people's government. The Methods also provided that national social organizations should apply and register with the Ministry of Internal Affairs and local social organizations should apply and register with the local governments, thus setting the principle of registration with different levels of the governments and forming the controlling system of the social groups by different levels of the governments. In March 1951 the Ministry of Internal Affairs enacted the Detailed Implementing Rules for the Provisional Methods for the Registration of Social Organizations(<<社会团体登记暂行办法实施细则>). Based on these rules, the Ministry of Internal Affairs and the local governments registered all social groups including mass groups of the people, social groups for public interest, literary and artistic groups, academic research groups, religious groups and other social groups organized in accordance with the laws of the people's government, granting them their legal status. This period witnessed a large-scale growth of social organizations in China. It was estimated that the social organizations at the national level were increased from 44 at the beginning of the PRC to 100 in 1965 while the same period also saw local social groups developed to more than 6000. However, during the Cultural Revolution the development of the social groups was heavily jeopardized.⁵

The third stage covers the period from the Third Plenary Session of the Eleventh Party Congress till now. Since the year of 1978, there has been an economic reform taking place in the Chinese society. Along the process of this economic reform, the social structure of China also took a great change. Civil society (minjian shehui), noticed by

⁵王名, 刘国翰, 何建宇, <<中国社团改革>>, 第一章, 2001

many scholars, became a part that could not be ignored standing between the society and government. After the economic reform began, until the end of the 1980s, the number of the national social organizations increased greatly to 1600, and at the local level the number increased to 200,000.⁶

Entering the 1990s China formally recognized the market economy and set the goal for social and economic reform that centers on a small government and big society. The transformation of the economic systems and the government's functions provided more space for the development of non-governmental organizations. This period has seen several ups and downs in the management of social groups. Although the pace for the increase of social groups obviously slowed down, this period also saw the emergence of many types of non-governmental social groups. After the re-registration of the social organizations, the statistics revealed that there were 136,841 social organizations registered under the Ministry of Civil Affairs (MOCA). At the same time one type of new non-governmental social organizations emerged -- non-entrepreneur units established by non-governmental entities. In order to adapt to this new trend of development of non-governmental organizations, the State Council issued in 1989 "Regulations on the Registration and Management of Social Organizations" (<<社会团体登记管理条例>>), which established the basic framework for double management of social organizations in China. In addition, in September 1988 and June 1989 two other regulations, Methods for Managing Foundations (<基金会管理办法>) and Provisional Regulations for Managing Foreign Business Associations (<<外国商会管理暂行规定管理条例>>) were promulgated. In the year of 1998, the new "Regulations on the Registration and Management of Social Organizations" was enacted. In October 1998 the Provisional

⁶俞可平, <<中國公民社會的興起與治理的變遷>>, 2002.

Regulations for the Registration of Non-Entrepreneur Units Run by Non-governmental Organizations (<<民办非企业单位登记管理暂行条例>>) was made. In August 1999 the Methods for Public Donation (<<公益事业捐赠法>>) was made. All these show that China began to improve its regulatory system for non-governmental organizations.⁷

The new “Regulations on the Registration and Management of Social Organizations” in 1998 and the Provisional Regulations for the Registration of Non-Entrepreneur Units Run by Non-governmental Organizations have further clarified the types of non-governmental organizations. Under these regulations non-governmental organizations are classified as including social groups and non-entrepreneur organizations run by non-governmental organizations. Social organizations mainly refer to non-profitable social organizations formed by the Chinese citizens on the voluntary basis to carry out activities to realize the common wills and goals for the members.

The organization that this research is concerned, -- the Beijing Municipal Lawyers Association (北京市律师协会)—was registered with the Ministry of Civil Affairs as a social organization in accordance with the Regulations on the Registration and Management of Social Organizations, which belongs to the category of professional organizations in social organizations.

These legislative activities of the government are seen as the evidence for the government to claim that social participation in China is encouraged by the state, and that the control from the government gradually turns loose. The government claimed that they were giving power the society and a “big society, small government” structure was going to replace the autocratic one.

⁷王名, 刘国翰, 何建宇, <<中国社团改革>>, 第一章, 2001

However, many scholars devoted to the study of China's civil society in contemporary period argued that the change of the state-society relationship actually is only superficial, especially after the promulgation of the new "Regulations on the Registration and Management of Social Organizations" in 1998. This new regulation, at the first sight, legalized the social organizations by providing them a legal status. However, on the other side, it provides a dual-registration system: "no social organization can register with the Ministry of Civil Affairs (MOCA) unless it has a professional supervisory agency, usually a governmental institution". (Ma, 2002) That is to say, a social organization has to seek approvals from two entities: its professional supervisory boss and the Ministry of Civil Affairs. Scholars and civil society leaders often call this professional supervisory agency a mother-in-law. The requirement of the dual-registration is widely considered holding back the development of the civil societies. "The state just changed its way to control the society." (Moore, 1993; Christenson, 1997) The rise of the number of social organizations, according to civil society scholars, could not represent an important change because the organizations do not have enough power and less than 50% of them are self-organized, self-supported and self-governed. (Ma, 2002) "The party-state has sought vigorously to control the reshaping of the state-society relationship. Most notably, the new regulatory policy issued in 1998 has strengthened the government's control..."(Ma, 2002) In further analysis in her paper, Ma mentioned some organizations maneuvered with the government in this registration "game". They either registered under some business organizations, academic institutions, or do not register at all. These organizations are considered playing a more active role in the development of the public sphere in China. Those organizations which registered under the dual-registration system are considered intuitively powerless since they are under direction from the supervisory agency.

I agree with the scholars on the powerless situation of the social groups in China. But I think it is too early to judge the power relationship without going through the concept of “power”. Are the social organizations called GONGOs totally lack of power? Or do they enjoy some power in some aspects and not in other aspects? If yes, to what extent they have the power? My research will be concerned about these questions. However, in the next part, I will briefly go through the concept of power.

C. Power

There is an extensive literature on the study of power. Without going it in detail, I am here only focusing on what as I see is relevant to my thesis.

A new round of discussion on power started from the book “Power Elite” written by C. Wright Mills, in which he shows that power is distributed according to the positions. However, this idea seemed resting on an executive level and could not provide a satisfactory explanation to the complex phenomenon of power. Following the discussion, Robert Dahl used a very impressive research on the political system of the United States to demonstrate that the “decision-making” process represents the possession of power. His explanation is from a pluralist view. In Dahl’s article “The Concept of Power”, he described: “A has power over B to the extent that he can get B to do something that B would not otherwise do.” And in his work “Who Governs”, from a behavioral view, he focused on the decision-making process on the key (political) issues. In other words, if A could “DESIDE” that B should do something that they would otherwise not do, then A has the power.

However, in the article “The Two Faces of Power”, Bachrach and Baratz posed their critique of Dahl’s conceptualization of power. Power relationship exists not only in

the decision-making process, but also in the non-decision-making situation. Non-decision-making here means the exclusion of some issues from the agenda so that they would not have a chance to be decided on. In B&B's work "Power and Poverty. Theory and Practice", they stated that "...Power is also exercised when A devotes his energies to creating or reinforcing social and political values and institutional practices that limit the scope of the political process to public consideration of only those issues which are comparatively innocuous to A." "Power may be, and often is, exercised by confining the scope of decision-making to relatively 'safe' issues." (Bachrach & Baratz, 1970) In their work "The Un-Politics of Air Pollution: A Study of Non-Decision-making in the Cities", they mainly identify the issue which non-decision-making prevents from being actual. Compared to Dahl's work, we can see that the research done by Bachrach & Baratz focused both on the decision-making and non-decision-making processes in issues and potential issues. They paid attention not only to the overt conflict, but also to the covert conflict in both A and B's interests.

In my work, inspired by Bachrach and Baratz's concept of power, I will try to analyze the power relationship between my targeted organization: Beijing Municipal Lawyers' Association, and its "mother-in-law", the Beijing Municipal Bureau of Justice, which represents the state authority.

However, one thing that needs clarification here is my use of the term "power". People may be reluctant to use the term "power" to describe the relationship between a government, which represents the highest authority, and a civil society organization, which is under the control of the state, especially in China, an authoritarian society. Instead they may use "rights" to replace "power". However, "rights" are more likely something clearly written in law and it is mostly used to refer to individual rights. On the

other hand, the use of the term “rights” denies the conflict of interests between the government and the civil society.

By “power” I refer to a kind of “strength” the civil societies have. It is actually closer to the concept of “autonomy”. However, “autonomy” seems a little passive to describe the relationship between the association and the government. In the relationship between the two parties, there are always interest conflicts. That is why I chose to use the concept of power.

My power analysis will be on three levels: executive power, decision-making power, and agenda-setting power. However, due to the limitations of the data and other sources, I found it difficult to go deeply through the agenda-setting level to do my analysis. This is one of the limits of my research.

Power-relationship exists in every moment of interaction of the two parties. My analysis will focus on the context of professionalization. My last part of literature review will be around the concept of “profession”.

D. Profession

What is a profession? In sociological sense, when people conduct studies on professionalism or the professionalization process of the contemporary society, one of the dominant approaches is called the “taxonomic approach” which has been made popular by D. Klegon in his work “The Sociology of Professions: an Emerging Perspective, Sociology of Work and Occupations”(1978). This approach believes that “(1) professions possess some unique characteristics which set them apart from the non-professions; and (2) professions play a positive and important role in the division of labor in society” (Saks, 1983). Scholars who adopt this approach conceptualize “profession” by giving a “check-

list of particular attributes” (Yee, 2001) that they think should be the essence to define a professional occupation. E. Greenwood was one of the most famous one who adopted the taxonomic approach and whose definition of profession has been popular among the academics. He asserted that “all professions possessed the following attributes: systematic theory, authority, community sanction, ethical codes and a culture.” (Yee, 2001) B. Barber provided a similar interpretation about profession which showed a consensus in his work (1963), he listed the intellectual training, the ethical codes, the concern for public good and the rewards for the professionals as the main attributes that define a profession. More efforts were put by other researchers, however, in 1964, G. Millerson did an analysis on the previous discussion and offered a summary of 13 attributes based on 21 sources: 1. A profession involves a skill based on theoretical knowledge. 2. Professional skills require extensive and intensive training and education. 3. The professional must demonstrate competence by passing a test. 4. The profession is organized and it is represented by an association of distinctive character. 5. Integrity is maintained by adherence to a code of conduct. 6. Professional service is altruistic. 7. The professional assumes responsibility for the affairs of others. 8. Professional service is indispensable for the public good. 9. Professionals are licensed, so their work is sanctioned by the community. 10. Professionals are independent practitioners, serving individual clients. 11. They have a fiduciary relationship toward their clients. 12. They do their best to serve their clients impartially without regard to any special relationship. 13. They are compensated by fee or fixed charge.

Simplifying and summarizing the above 13 attributes, I think there are five very basic attributes that shape the concept of “profession”: first of all, a “profession” requires the **intellectual education/training**; secondly, it is basing on the **ethical codes** (including **sanctions** and **rewards**); thirdly, professionals must have the concern for the **social**

interests; fourthly, the **bonding of a community** is a must for a profession; and finally, the professionals enjoy **autonomy** when they are dealing with their work and their clients. In this thesis I will mainly look into these five attributes of the BMLA to see how much power it has.

Lawyers in the West are the models of professionals, because there is a long tradition of this profession. However, lawyers in China could hardly be called professionals. First of all, in China, there has not been a clear sense of “profession”. The Western concept of profession is spreading in Chinese society with the process of globalization in the recent years. Doctors, accountants, lawyers, who are representatives of professionals, had no history being considered as professionals in Chinese society. The “legal profession” in China is not a deep-rooted concept. This concept hadn’t turned out in the Chinese society until the Republic China. People who served the interest of litigants were often penalized and those who incited others to undertake litigation or make profit out of managing a lawsuit were called “song shi” (litigation masters) in Imperial China. The concept of litigation masters first emerged during the commercial revolution of the Song, becoming ever more prevalent, and despised, during the second commercial revolution of the late imperial period. Initially, they had a legitimate status and only litigation abuses, such as inciting to litigate or helping to falsify charges, were unlawful, as in the Ming codes. But by the beginning of the nineteenth century, just being a litigation master became a criminal offence as the Qing state tried, unsuccessfully, to channel all litigation through its undermanned bureaucracy. It opposed litigation masters because they were outside state control and structures. As the population exploded, commercialization and urbanization grew, and geographic mobility expanded, that is, as society became more

complex the Qing government had neither the resources nor the inclination to expand to meet the population's litigation needs, and litigation masters filled the void.⁸

As Alison Conner argued, late imperial China produced neither a private, independent legal profession nor a formal program for training legal specialists. The introduction of legal and educational reforms in the closing years of the Qing dynasty (1644-1911), however, led to the establishment of schools offering courses in law and government, not only in the capital but also throughout the provinces. Their main purpose was to train officials for judicial and tax positions while providing an alternative to the traditional examination system. Such law and government schools soon outnumbered other new schools and attracted the most students because they offered several fields of study, the government permitted them to be established privately, and legal talent was seen as necessary for the proposed constitutional government. Consequently, according to one source, they became the core of higher education at that time.⁹

But the real development of modern legal education and of the legal profession itself came during the Republican period (1912-49) with the founding of more professionally oriented schools and the enactment of legislation officially recognizing private lawyers. The years from 1912 through 1927 in particular represented an era of relative freedom for many schools. The increase in the number of educational institutions was arguably facilitated by the weakness of the central government, which also made it possible for a more autonomous and diverse system to develop. Many more law colleges were founded during this period; there were already forty-nine by 1915-16, and many students continued to enroll because it seemed an easy route to becoming officials in the new government.¹⁰

⁸ Macauley, Melissa; *Social Power and Legal Culture: Litigation Masters in Late Imperial China*
⁹ Alison W. Conner, *Training China's Early Modern Lawyers: Soochow University Law School* *Columbia Journal of Asian Law*, Volume 08, Number 1, Fall 1994
¹⁰ *Ibid.*

However, owing to the violent social changes after the Republican revolution, successive disruptive events, and wars, the efforts made during the early part of the 20th century didn't yield inheritable results. Since the Communist Party got its control power until the beginning of the economic reform, lawyers were always under pressure. Even after the economic reform, lawyers' political status was also "State-Owned". Until 1987, the state began to make some change on the policy toward legal profession. Four law firms which originally belonged to the state were privatized. After a four-year experimental process, the performance of the four was dramatically outstanding. In 1992, the state legalized the privatization of the law firms, and up to now, the ownership of 99% law firms in Beijing are mostly partnership. After 1992, many legal workers and officials who originally belonged to the state went to the market and built their own private partnership law firms. This was called "lawyers' going into the sea" in Chinese. The number of lawyers in Beijing dramatically increased after 1992. The "legal industry" became a hot one. However, by that time, there were no academic or other requirements for people to be a lawyer, so everyone with any bachelor degree or a legal diploma could be a lawyer.

The lack of tradition or expertise and the radically changed situation made the development of the legal profession in Beijing more difficult. On one hand, they are facing an increasingly free market; on the other hand, they have not been professionalized.

How could lawyers in China go on the route of professionalization? How do they professionalize themselves? The civil society, the representative of these lawyers are considered as the leader of this task. However, compared with the developed Western countries, civil society in China isn't as strong. So to what extent the civil society--the lawyers' association could function in helping the legal profession in China being professionalized is still a problem. Therefore, my research, taking the BMLA as the targeted organization, will try to see some of the major issues concerning legal

professionalization, such as bonding the lawyers' community, providing and standardizing the training/education, making the education more intellectual, making community codes, administering sanctions and awards, and protecting lawyers' authority, especially what role the BMLA can play, how much power it may have and how much help it can offer in the whole process of professionalization.

My hypothesis is: as a professional organization of the legal profession in China, BMLA has some power, though not without restrictions, when leading the lawyers to be professionalized. It gets some power from the Beijing Municipal Bureau of Justice on the decision-making level and executive level, but is still largely excluded from the agenda-setting process.

Conclusion:

In this chapter I reviewed four important concepts that are relevant to my work. In the first section, I tried to summarize and introduce the historical development of the concept of civil society. In the second section I reviewed the existing literature about the civil society in Chinese society. In the third section, I talked about a new conceptualization of power which provides us a multi-dimensional view of power. Finally, I introduced the concept of profession with a taxonomical approach. My hypothesis is: as a professional organization of the legal profession in China, the BMLA has some power, though not without restrictions, when leading the lawyers to be professionalized. It has power mainly at the decision-making level and executive level, but is still largely excluded from the agenda-setting process.

CHAPTER THREE METHODOLOGY

The methodology employed in this thesis is mainly case analysis based on my fieldwork in the BMLA during the summer of 2004. It is a qualitative study, relying on first hand materials obtained through direct observation and interviews with the officials of the BMLA and individual lawyers, and published as well as unpublished materials provided by the BMLA. In addition, it also relies on the second hand materials on the theoretical issues related to the topic and the arguments of this thesis, for instance, the literature on civil society in the West and in China. The case analysis is also sometimes supplemented by other research methods such as logical and textual analysis, historical method and even comparative analysis.

As mentioned in the introductory chapter of this thesis, my focus of this study is about the power relationship between the civil society and the state. "Power" in this paper is seen as having different layers: agenda-setting power, decision-making power, and executive power. The analysis of power is put into a context of professionalization. I focus mainly on several aspects of the powers enjoyed by the BMLA. These include the power relations in legal professional education and training, community code-making, professional autonomy, and the degree of power in fostering community culture and participating in social activities. It looks at the professionalization issues at both individual and institutional level. The former aspect refers to the community codes/regulation making, the social activities organized by the community, and the bonding of the community culture; the later aspect refers to the professional education/training, and the protection of the lawyers' autonomy.

The professional education and training are important indicators for the degree of professionalization. To understand whether the BMLA has the decision-making power or the agenda-setting power concerning the professional education and training issue, my discussion will be based on the annual records of the training courses and the opinion from the ordinary members who are undergoing the training now.

The codes/regulations are of the primary importance for a community. First of all, most obviously, the regulations govern the behaviors of the members. Secondly, it represents the ideal and the standards of the ethics of the professional group and the whole community. Thirdly, it shows the picture of the relationship between the professional group (BMLA) and the regular members. How much power the BLMA can enjoy regarding this issue indicates the extent of self-regulation of this professional group. The discussion will be on two levels: the decision-making level and the agenda-setting level. While analyzing on the former level, I will see through the whole decision-making process: including the process of the discussion, the achievement of a final agreement, the approval of the new codes, etc; concerning the agenda-setting level, I will examine who initiated the meeting, what made the board think a new code should be made, whether there was an agenda to be based on, etc.

The autonomy of a lawyer is the most important thing that makes a profession to be a profession. The protection of the individuals' autonomy is the primary responsibility of a professional group. In my thesis, I am going to examine three cases in relative detail to see the power tension between the BMLA and its supervisory agency which defends the interest of the state. Compared to the role distribution in the whole decision process, whose hand it is to mark the issue on- or off-agenda is more crucial in this discussion.

The bonding of the whole community is simultaneous to the building up of the community culture. The culture construction is another important factor that indicates the

extent of professionalization. In my thesis, I use the term of culture to refer to the building up of trust, the stimulation of participation in community activities, and the promotion of tolerance. My concern is about the power that the BMLA enjoys in the culture construction process.

Another issue of importance is the social activities organized by the BMLA. One of the important factors that construct the concept of profession is the concern of social good. My discussion concerning this aspect is going to examine the power the BMLA has in the organizing process, to see the association's strength on making and executing decisions on every step it takes.

Conclusion:

To conclude, this research is mainly a case study which may provide some insight for the discussion on the civil society in China, especially in the discussion on the professional groups which are in the transitional process from a government organized institution to a self-controlled real social organization. The methodology of this thesis is qualitative. The sources of my analysis are from interviews and some original materials I got in my fieldwork.

The analytical framework contains two elements: a multi-layer view of power and a five-component analytical model for understanding the legal profession as a social organization that bears defining characters of a civil society. The multi-layer view on power looks at the power relations and the scope of power by dividing power into agenda-setting power, decision-making power and executive power. The five-component analytical model of a civil society takes professional education and training, community code-making, professional autonomy, and the degree of power in fostering community culture and participating in social activities as major defining characters of a civil society.

CHAPTER FOUR BEIJING MUNICIPAL LAWYERS' ASSOCIATION AND BEIJING MUNICIPAL BEIJING MUNICIPAL BUREAU OF JUSTICE

Introduction: Development of legal profession in Beijing

The legal profession in China was restored in 1979. Before 1988, Chinese lawyers were state-owned. They were in the governmental system under the Beijing Municipal Beijing Municipal Bureau of Justice. In 1988, with the approval from the Beijing Municipal Government, four big and successful law-firms, Junhe, Dadi, Jingwei and Beifang were transformed from state-owned law firms to partnerships. After a four-year-long experiment, it was proved that the new types of law firms lead to more incentives and higher efficiency. So in 1992, most state-owned law firms were transformed into partnerships. Lawyers' identity changed from national cadres to free professionals. After 1992, hundreds of law-firms were founded in Beijing and the legal profession developed in a very high speed. However, after several years practice, it was found that the collectivism was still unsuitable for the development of the law-firms. Cooperative firms (hezuo zhi) is one form of the collective ownership, under which profits of the firm should belong to the whole group. This distributive method doesn't fit to the need of the development of legal profession. Therefore, in 1995, the cooperative law-firms changed to partnership law-firms. Up to now, more than 97% of China's law-firms are operated in the form of partnerships.

A. Beijing Municipal Lawyers' Association

Beijing Municipal Lawyers' Association (BMLA) was built up in 1952 by the Bureau of Human Resources and the Bureau of Finance, and resumed in the August of 1979 after the ten-year Cultural Revolution. The BMLA held its first Beijing Lawyers' Representative Conference in the April of 1982, announcing the formal establishment of the BMLA and passing the first Articles of Association of the BMLA (Beijingshi lushi xiehui zhangcheng). The BMLA had been a directly subordinate unit under the Beijing Municipal Beijing Municipal Bureau of Justice until 1995. However, along with the political reform, in 1995, the BMLA was handed to the lawyers themselves. The posts of President, Vice-Presidents and executive directors and members of Council, which had always been occupied by the leaders of the Beijing Municipal Bureau of Justice, were from then on returned to the practicing lawyers. Under the "Regulations on the Registration and Management of Social Organizations" modified in September 1998, the BMLA registered with the Ministry of Civil Affairs as a social organization under the professional supervisory agency: the Beijing Municipal Beijing Municipal Bureau of Justice. "According to the Lawyers Law of the People's Republic of China (Lawyers' Law) and the Articles of Association of the Lawyers Associations, the BMLA exercises its professional management over the lawyers practicing in Beijing. By April 30, 2002, six lawyers' representative conferences had been convened. The BMLA now has 462 group members and more than 6300 individual members."¹¹

"The highest authority of the lawyers association is the Lawyers' Representative Conference (Beijing lushi daibiao dahui). The delegates to the Conference are elected from the individual members."¹² The responsibilities of the Lawyers' Representative Conference are: "to make suggestions on amending the Articles of Association and other

¹¹ "Articles of the Beijing Municipal Lawyers' Association", Chapter 1;

¹² "Articles of the Beijing Municipal Lawyers' Association", Chapter 2;

important matters to the national lawyers association; to discuss and decide upon the work principles and tasks of the BMLA; to hear and examine the work report by the Council; to examine the report on the expenditure and revenue of membership fees; and to elect and recall the Council members of the association.”¹³

The structure of the BMLA includes three main parts: the council, the supervisory committee and the secretariat. The Council of the BMLA elected by the lawyers’ representative conference is the decision-making unit of the association. It holds a meeting at least once (usually twice or three times) every year. The service duration of this Council is three-year long. The Council is formed by the practicing lawyers who have more than three years of law practicing. The Council elects around ten people as the members to form an Executive Board which takes the responsibility when the Council is off-meeting. The current Council (the sixth Council) has 69 members including a President, four Vice-Presidents, 10 members of the Executive Board and 54 members of the Council.

The Supervisory Committee is also elected by the conference. It supervises the running of the Council mainly according to the “Regulations Concerning the Administration of Social Organizations”. The Supervisory Committee is formed by seven practicing lawyers with a Chief Supervisor and six Supervisors.

The third part of the BMLA is its executive organ, Secretariat. The Secretariat plays a very important role in the daily work of the association. All the decisions from the Council are implemented by the Secretariat. The Secretariat has a Secretary-General who is appointed by the Executive Board, usually by the President and the Vice-Presidents. The Vice-Secretary-General is appointed by the Secretary-General. The Secretariat now has nine departments responsible for comprehensive research, members’

¹³ “Articles of the Beijing Municipal Lawyers’ Association”, Chapter. 3;

rights and interests, professional training, professional discipline, international affairs, publicity and liaison, information network, financial affairs and administrative affairs, and it also has an office of the supervisory committee working under the supervisory committee of the association.

According to the Lawyers' Law, the BMLA, as a regional lawyers' association, performs the duties such as : assuring that lawyers practice according to law and protecting lawyers' lawful rights and interests; summarizing and exchanging lawyers' work experience; organizing professional training for lawyers; conducting education in, inspection of, and supervision over, the professional ethics and practice discipline of lawyers; making arrangements for exchanges between Chinese and foreign lawyers; mediating disputes arising in lawyers' practice activities; and other duties prescribed by law.

Besides these responsibilities stated in the Lawyers' Law, The BMLA also has its own Articles of Association stating its functions, which partly emphasizes the functions written in the Lawyers' Law, and also added some new contents: supporting lawyers to practice by law, safeguarding the lawful rights and interests of lawyers and improving the system for practicing lawyers; formulating and supervising over the lawyers' practicing norms and lawyers' professional management system; providing guidelines for standardized management of law offices; summarizing and exchanging working experiences of lawyers to upgrade the over all level of lawyers' practicing; being responsible for the education, inspection and supervision of the lawyers in terms of the lawyers' professional ethics and disciplines; being responsible for the routine management of its members and their registration and conducting annual registration over law offices and lawyers as entrusted by the judicial administrative organs (Beijing Municipal Beijing Municipal Bureau of Justice); formulating the lawyers' education

programs, conducting pre-practicing training and post-practicing continuing education for lawyers, and preparing training programs and materials for trainees; dealing with the complaints against lawyers and law offices; mediating disputes arising in the course of law practicing between and among its members; publicizing the work of lawyers and publishing of lawyers' journals; organizing its members to conduct external exchanges; organizing and developing the welfare undertakings of lawyers; establishing and improving the insurance system over lawyers' practicing liabilities to safeguard lawyers' practicing by law; coordinating the relationship among the judicial, law-enforcement and administrative organs to improve the environment for lawyers practicing and to put forward recommendations and proposals to judicial and legislative organs; formulating and supervising the measures for the implementation of awards and punishments of its members; fulfilling other duties and responsibilities upon authorization by the judicial administrative organs and All China Lawyers Association; fulfilling other duties and responsibilities as stipulated by the laws and regulations.

The BMLA also has several special committees, which are also in charge of execution of some daily affairs. Each special committee is composed of the council members of the current term, "As the executive organs of the association, they work closely with the secretariat to implement the resolutions of the council and executive board, fulfill the duties and responsibilities of the association and make full play of the self-disciplinary role of the association."¹⁴ The committees are: Legal Profession Development Research Committee, Rights and Interests Safeguarding Committee, Member affairs, Welfare and Cultural and Sports Committee, Professional Guideline and Continuing Education Committee, Regulatory Framework Committee, Discipline Committee, Publicity and Liaison Committee, Foreign Affairs Committee,

¹⁴ "Articles of the Beijing Municipal Lawyers' Association", Chapter. 3;

Administrative Affairs Committee, Financial Affairs Committee, and Women Lawyers Union. These committees are responsible to the Executive Board of the BMLA.

B. Beijing Municipal Bureau of Justice

Beijing Municipal Bureau of Justice is a department of the Beijing Municipal Government which is responsible for the legal executive affairs. One of the main responsibilities is to govern all the lawyers, legal consultants, legal assistants and the public notary work in Beijing, to do research on the reform and development of the legal profession and the public notary, and to propose practical means. It is in charge of the management of the lawyers, legal advisers, legal aid and public notary in Beijing. It also does research on the reform and development of legal service and public notary and introduces implementing rules.

As stated in the previous chapters, the BMLA was originally a department under the Beijing Municipal Bureau of Justice when it was founded. Before 1995, all the important leaders of the BMLA were the leaders from the Bureau. Until now, in the official website of the Beijing Municipal Beijing Municipal Bureau of Justice, the BMLA is still listed as a direct department of the Beijing Municipal Bureau of Justice. Even now, the BMLA and the Beijing Municipal Bureau of Justice still have many overlapping responsibilities. For example, dealing with the complaints of the lawyers should be the responsibility of the BMLA. There would be two members of the Council every week waiting at the Secretariat of the BMLA to meet the complainers. However, in the official website of the Beijing Municipal Bureau of Justice, there is a platform for people to hand in their complaints. It shows there is no clear line that divides the responsibilities of the BMLA and the Beijing Municipal Bureau of Justice.

At the beginning of the 1990s, the Ministry of Justice already worked out the idea of a “combinary” management strategy to govern the legal profession in China, which means the professional association should be self-ruled with the executive guidance from the Beijing Municipal Bureau of Justice. However, the transition process takes longer than it was expected and it is still going on. Now we could see the Beijing Municipal Bureau of Justice is withdrawing from some daily affairs. However, there is still no legal document that draws the boundary to restrict the power of the Beijing Municipal Bureau of Justice. Last year, the Executive Board of the BMLA suggested that the Beijing Municipal Bureau of Justice clarify its own responsibilities. One way to draw a clear boundary of power suggested by the members of the Council is the idea of “controlling the two ends, while handing the middle part to the BMLA”, which means the Bureau is only in charge of issuance and rescission of the lawyers’ licenses, and the BMLA takes the responsibility on other matters concerning the management of lawyers. This actually meets the requirement of “combinary” strategy. However, up to now, the Beijing Municipal Bureau of Justice has no response to this suggestion.

CHAPTER FIVE POWER RELATIONS IN THE LEGAL PROFESSIONAL EDUCATION AND QUALIFICATION EXAMINATION

As is the case with all professions, legal profession starts with legal education. In order to become a lawyer one must go through rigorous legal education and obtain a lawyer's certificate. The Chinese case is no exception. In the second chapter of the Lawyer's Law passed by the National People's Congress in 1996 and revised in 2001, it is clearly stated that certain preconditions should be met to become a lawyer. Article Six of the Lawyer's Law regarding the educational background of a lawyer provides "Anyone who wants to obtain a qualification of lawyers shall pass the uniform national judicial examination. Anyone who has completed four-year courses in other fields of learning in institutions of higher education and has professional knowledge of law may be qualified for a lawyer after passing the national judicial examination."

In view of this, it is appropriate for me to begin my analysis of the power relations with the legal education and training, and lawyer's qualification examinations in China. This section of my thesis will be devoted to that purpose. It contains two parts: an analysis of power relations in the legal education and training and an analysis of power relations in the lawyer's qualification examination.

A. Power Relations in Legal Education and Training

Legal education in China has experienced a very special process. The starting point of the legal education initiated by the communist party could be traced back to 1933. The founding of the Soviet University was the sign of the appearance of legal education. Until 1950s, legal education in China had always been aiming at cultivation of

the cadres for the Communist Party. The law schools normally had Department of Politics and Departments of Justice. The former was to teach people how to serve in an executive department of the government, and the later was to prepare people for the country to work in the courts.

In June 1951, The Ministry of Education made the “Draft Guidelines of Law Schools and Departments of Law”. In this Draft Guideline, it was clearly stated that the responsibility of the law schools was to “educate and train carders for legal work who understand current policy and regulations and the new legal science and who serve the people in order to consolidate the people’s democratic dictatorship, adapt to the need of the state construction and the prospects of social development, based on the Common Program and guided by Mao Zedong Thought.”¹⁵ That is to say, legal education at that time was first of all, basing on the communist ideology, especially Mao’s personal will; secondly, aiming at educating people who work for the party and the government; thirdly, the contents in the education were only policies and rules.

During the 10-year-Cultural Revolution, the legal education was terminated, and it was resumed at the beginning of the 1980’s. Although the legal education after the 1980s is quite different from that in the 50s, yet the basic idea of the legal education in China has never changed, which is aiming at ensuring the leading role of the Communist Party and consolidating the social order, and the students under this educational system are supposed to be the officials in the political system of China.

Under such a situation, the modern legal education was totally distorted. The legal education not only neglect the central idea of law and the legal system: freedom and equality, but also used the education as a tool to putting the idea of “government

¹⁵楊振山, <<中国法学教育改革之研究>>, 法律教育網

prior to all” into the students’ heads in order to maintain the social order and to strengthen the party’s political control.

The government runs Law schools in China. After the resumption of the legal education, there were law schools and law departments at universities. Legal education in China is provided by a number of different types of institutions supervised by different government entities. The law departments in universities are generally under the jurisdiction of the State Education Commission (formerly the Ministry of Education). The politics and law institutes are under the Ministry of Justice. The Ministry of Justice also operates the Central School for Politics and Law Management Cadres, the Central School for Labour Reform Management Cadres, and schools for the training of judicial cadres below university level. Moreover, the provincial authorities also managed some university law departments and politics and law schools. In recent years legal education in China has seen remarkable development. Many law departments at universities have been upgraded to law schools. Many universities run by provincial governments also have established law schools, which are managed by both the Ministry of Education and the provincial governments.

Lawyers Associations at various levels do not directly concern themselves with the legal education. The establishment of law schools, the recruitment of students, the design of curricula and the general education of law students are effectuated by the law schools under the guidance of the Ministry of Education and the Ministry of Justice. The lawyers Associations are left out throughout the whole process. This is very different from things in other countries. For instance, in the United States, law schools are not run by the governments at the federal or state level. In order to keep the minimum standards for professional quality and ethics three professional associations have taken the responsibility to set and administer professional standards. These are American Bar

Association, (ABA)、 Association of American Law School (AALS) and the Association of American Law Library (AALL). The ABA was founded in 1878, which has a Standing Committee on Legal Education , whose duty it is to provide hardware requirements for law schools and issue approvals to qualified new law schools. The AALS was founded in 1900 and has enormous influence on American law schools. The AALL exercises professional guidance over law libraries in the US law schools, specifying various sorts of standards and conducts periodical evaluation and appraisals. These professional associations have played very significant roles in the US legal education. Their growth goes hand in hand with the development of the US law schools and legal education.

Under the direction of the three professional associations, especially the ABA, American legal education has been pursuing a professional training route. Law schools take in students who already have bachelor's degrees and the legal education is a kind of postgraduate education aimed at training of the legal professionals. Having gone through the undergraduate education and the three-year JD education at the law schools, law graduates are equipped with sufficient general knowledge and legal professional knowledge. To qualify as lawyers these law graduates have to pass the bar exams administered by the ABA or Bar Associations of different states.

Legal education in China, however, is a kind of “aiming at the jobs” education, which is quite different from the professional education in the US. First of all, legal education in China is undergraduate education which provides legal knowledge to young high school graduates who have not yet received comprehensive liberal arts education. The quality of legal education emphasizes recitation and memorization, as is the case with code-based legal systems, rather than a practice-oriented and more independent approach that would make new graduates more adaptable once out of school and in the

courtrooms. As a result, law students learn legal knowledge and recite legal provisions without adequately understanding the spirit of law and the humanity background of it. Secondly, as legal education was suspended in most part of the PRC history, right after the inception of the economic reforms there were not enough lawyers to cope with increasingly large number of economic and legal disputes. In order to tackle the problem of the shortage of lawyers the government promulgated very loose requirements for becoming lawyers. The single most important piece of legislation in regards to the legal profession that has been passed during the law-making frenzy is the Lawyers Law, passed in May of 1996. Before 1996, the profession in China when compared to international norms was so inconsistent and ill supervised that even today after the passage of the law close to 30% of lawyers practicing, those who received their licenses prior to this piece of legislation, have only a high school education.

This law standardized the legal profession and set up regulations and rules in order to give lawyers more protection and also to define the role they play in the legal realm. Lawyers are now all required to undergo four years of specialized legal education, pass the National Lawyers Examination, undergo one year of practical training within a law firm, and then he/she may apply for a lawyer's practicing certificate. The same law, however, also allows those who have not gone through specialized legal training, but have undergone four years of a general college education along with "professional legal knowledge" to become lawyers. As a result, a large number of Chinese practicing lawyers do not have law degrees. Thirdly, since the reform China encouraged all forms of learning. Various types of continuing education mushroomed throughout the country; including adult continuing education, distance learning, evening classes, on-job training, etc., among which legal training programs are steadily on the rise. Those who had no

formal legal education could now have a certificate which in effect equals to that of a college law graduate and could have access to the lawyers qualification exams.

These special features in Chinese legal education have amounted to one necessity: on-job training. The new lawyers law therefore provided that all lawyers must constantly receive professional training while working as lawyers. It is in this respect that the lawyers associations have very significant power. In the following I will explain this in connection with the case of BMLA.

In my interviews with the members of the BMLA, two Members of the Council of the BMLA both mentioned that the on-job training issue had been handed to the BMLA to deal with. And during my internship, I actually participated in their work. As previously mentioned, The BMLA has several specialized committees, one of which is the “Professional Guidance and Continuing Education Committee” which is responsible for the arrangement and course design for this on-the-job training. The work is collaborating between this committee and the secretariat of the BMLA. The Committee usually design the curriculum on behalf of the decision-making section of the BMLA and decides the list of law professors and legal experts to invite as teachers. The Secretariat is responsible for making logistic arrangements, including choosing training venues, sending out invitations to the law teachers and making announcements via the Internet. The whole process is entirely controlled by the BMLA, without participation by any governmental agencies. According to Ms. Li Han, a Standing Member of the BMLA, the professional training courses of the BMLA were highly commended by the Beijing Municipal Judicial Bureau and the Ministry of Justice, and recommended as a model to provincial lawyers associations throughout the country. Lawyers Associations of Sichuan Province and Xinjiang Uygur Autonomous Region visited the BMLA to learn from their experience.

It is clear that in conducting continuing education for working lawyers the BMLA does have the power to make decisions. If lawyers can design the curriculum for themselves, then they can adapt to what they need in their practice. The continuing education then could play a very important role in compensating the initial lack of legal knowledge and professional education of some lawyers, thus raising the professional quality of all Beijing lawyers.

However, in designing the training curriculum the BMLA must follow certain guidelines provided by the Ministry of Justice. My research leads me to finding out that as early as 1997 the Ministry of Justice already issued some guidelines for on-job training which have detailed requirements for designing training courses. The guidelines provided that the annual training program for each lawyer should not be less than 40 hours. The substance for training generally falls into three categories: 1) newly promulgated laws and regulations, including judicial interpretations, 2) professional knowledge such as economics, science and technology and foreign language which is related to legal practice, and 3) regulations and normative documents relating to legal professional ethics and disciplines issued by the Ministry of Justice and the All-China Lawyers Association.”¹⁶

In addition, the Ministry of Justice stipulated that some important courses such as advocacy and defense, especially criminal prosecution and defense must be organized by the judicial administrative organs or the lawyers associations, which should not be entrusted to law schools or any other educational institutions. Such training courses should not be less than one week and must be organized following the training courses organized by the Ministry of Justice or the All-China Lawyers Association.

¹⁶ See the official website of the Ministry of Justice

Furthermore, the guidelines also require that such training courses be organized by the judicial administrative organs or lawyers associations above the provincial level. The training agencies should carry out the training in accordance with the requirements of the local Bureaus of Justice and file to the Bureaus the course, teaching staff and time for the records.

It is clear from the above that even though the BMLA has the power to make decisions with regard to curriculum design and selection of teaching staff, it has to submit all these to the Beijing Municipal Bureau of Justice for the records. Filing for the records does not mean seeking for approval, but it serves as some kind of restraining mechanism abridging the powers the BMLA has.

As far as the Beijing Municipal Bureau of Justice is concerned, by providing the guidelines, it actually has exercised the power for decision-making. The training time and the course needed are already pre-decided by the Beijing Municipal Bureau of Justice, the BMLA can only exercise its discretion within a certain framework. I think that the power it enjoys in this case merely was restricted to the executive level.

This situation brought negative influence to the development of the legal profession and the development of the BMLA. Mr. Li, the head of the Legal Profession Development Research Committee, expressed his dissatisfaction with the on-job training sessions organized by the BMLA for the practicing lawyers. For him, this training is more like a kind of political course than a professional training. Some courses are aiming at telling the lawyers to put the social solidarity as the most important thing. The obedience to the Party, the love of the country and maintenance of the social order are the major ideas the professional ethics courses mainly aim to deliver. This kind of courses could not be of any help to the lawyers' practice.

Mr. Li mentioned that starting from 2005 online training will be introduced which will further demeaning the on-job training programs, as the trainees can access the training materials anywhere by a mere click of button. The records of visits to the online materials will be used for the annual inspection and examination. Then the purpose for the training becomes very clear: to pass the annual inspection and the examination by the Ministry of Justice and the Beijing Municipal Bureau of Justice.

The BMLA in fact was not clear about its share of the responsibility in on-job training programs. The Beijing Municipal Bureau of Justice takes responsibilities for program setting, but the BMLA is required to organize the specific sessions of training. Sometimes the demarcation of responsibility is not so clear. Within the BMLA there is no clear understanding as to which part of the training program it should be responsible. I noticed in my internship in the BMLA that when lawyers came to inquire about the training sessions, people in the BMLA often checked the website of the Beijing Municipal Bureau of Justice to get the information needed. When I was in the BMLA I was given some daily work in the professional training department which is the executive body of the BMLA for the on-job training programs. Its duty includes executing the training sessions designed by the BMLA. But as the power-sharing of the BMLA and the Beijing Municipal Bureau of Justice is not clear, the professional training department of the BMLA often think that the training should be arranged by the Beijing Municipal Bureau of Justice. Very often problems relating to the venue, the time and other administrative matters arise because of unclear delineation of responsibilities.

The power-sharing relations between the Beijing Municipal Bureau of Justice and the BMLA can also be seen from the annual inspection and examination on the outcomes of the training programs.

According to the instructions of the Ministry of Justice, in order to pass the annual inspection and examination a lawyer must complete no fewer than 40 hours on-job training courses a year. The annual inspection and examination is one of the powers that the Beijing Municipal Bureau of Justice exercises. As a principle, if a lawyer fails to pass the annual inspection and examination, his license for practice may not be renewed. Therefore this is one of the powers that the Beijing Municipal Bureau of Justice usually pays a lot of attention to. For a long time, the BMLA didn't venture to gain the power of autonomy in this regard. However, in my internship I found out that this power was already handed to the BMLA by the Beijing Municipal Bureau of Justice in August 2004. It was not a formal delegation of power. Rather the Beijing Municipal Bureau of Justice left two seals bearing the characters of the name of the Beijing Municipal Bureau of Justice to the membership department of the BMLA. Then it handed the standards for the annual inspection and examination made by the Beijing Municipal Bureau of Justice to the Secretariat of the BMLA. A lawyer member can have his annual inspection and examination done in the BMLA during a specified time, as long as he has all required documents with him. If a lawyer passes the inspection and examination, the BMLA will affix the seal of the Beijing Municipal Bureau of Justice on the lawyer's license. The whole process is completed in the BMLA, without the participation by the Beijing Municipal Bureau of Justice.

In this inspection and examination process, on-job training is a very important indicator. By allowing it to be handled by the BMLA, the Beijing Municipal Bureau of Justice has actually transferred this power to the BMLA. Even if the BMLA was not in any position to influence the legal education of the law schools, its role in controlling lawyers qualifications while in practice is significant.

B. Power Relations in the Lawyer's Qualification Examination

The bar in China was resurrected concurrently with law schools and firms during Deng's reforms. Both the All-China Lawyers Association and provincial judicial bureaus are the regulators. All bar associations in China are largely controlled by the Ministry of Justice in that the bureau provides most of the administrative framework and because of this the bars are relatively weak organs compared to their Canadian or American counterparts. The bar in the latter countries is a powerful and autonomous organ that is in control of setting ethical and professional standards and is responsible for penalizing or rewarding its members. In China it is the provincial judicial bureaus that hold this type of control and influence over lawyers. They hold the power to discipline lawyers; they can suspend lawyers for violations of ethical rules in the Lawyers Law and for more serious offenses can revoke licenses.

In addition to the provincial judicial bureaus, the All-China Lawyers Association is an influential organ in the legal profession. Founded in July 1986, it was set up as a national lawyer's self-disciplinary organization of all licensed Chinese lawyers in order to carry out professional administration by law. Though it is "self-disciplinary," the government provides for all the provisions, duties, ethics, and rules of the ACLA under the Law of the PRC on Lawyers. Under the Lawyers' Law, the main duties of the ACLA are to assure lawful legal practice, organize practical training for lawyers, conduct education, promote lawyers' in foreign exchange and relations, and mediate disputes arising from legal practices.

In China, the national judicial examination is organized by the Ministry of Justice. The Ministry of Justice organizes officials and legal experts to set the questions every

year. The Beijing Municipal Bureau of Justice of each executive district or province will set its own pass rate according to the participation rate and other situations.

This rule ensured the government's control of the practicing lawyers' educational background. Seeing from the surface, a national examination with a basic requirement of a tertiary educational level is a fair and reasonable way to make sure the practicing lawyers' quality, which did nothing wrong to the legal profession. But in fact, the legal education under the tight control from the government is quite different from it is supposed to be in modern times. This kind of control and the lack of power of the professional group got the Chinese lawyers great difficulty in their practice process.

Miss Wang, a staff of the secretariat of the BMLA complained in the interview, that because the National Judicial Examination was open to the whole society, the candidates were only supposed to provide their certificates of any legal educational diploma or of their bachelor degree in any field. This is very unhealthy for constructing a quality legal profession.

Conclusion:

This part mainly discussed how much power the BMLA can enjoy concerning the legal education aspect. As it is stated above, professional education/training is one of the most important elements that form the concept of a profession. In my research, I divided my discussion into two parts: one for the lawyers' legal education from the law schools, the other one is for the on-job training of the lawyers.

The law school education is the professional legal education. The law schools are playing an important role in the legal education. In the Western developed countries, for example, in the US, the legal education is actually under a tight control from the

professional group, the American Bar Association (ABA). The law schools got their licenses from the ABA. Only the law schools with licenses could give legal education and the students graduated from those law schools are identified by the law firms and the whole society and can become lawyers. But in China, the situation is very different. In China law schools are funded by the government and controlled by the government. The newly rising privately funded schools and various sorts of adult education institutions are not normalized, which have limited education capacity. The Ministry of Justice and the Bureaus of Justice at various levels have not paid enough attention to this reality but stubbornly hold to the power of admitting lawyers. The lawyers' associations of the country are aware of the problem of the professional inadequacy of admitted lawyers, but they do not have the power to control the entry of lawyers to the legal profession, nor could they refuse unqualified lawyers as their members. Therefore in this regard the decision-making power and the agenda-setting power are concentrated in the hands of the Beijing Municipal Bureau of Justice. The low quality of lawyers due to inadequate legal education has seriously jeopardized the legal professionalization process, but the ACLA and the BMLA can hardly play any significant role in improving this.

As far as the on-job training is concerned, the BMLA has *de facto* power to conduct training sessions as it likes, even though there is no formal delegation of power from the Beijing Municipal Bureau of Justice. The BMLA, however, has to act within the guidelines provided by the Beijing Municipal Bureau of Justice, including designing the curriculum. Its final decisions on each training program will have to be approved by the Beijing Municipal Bureau of Justice, which considerably limits the power that the BMLA has. In addition, as the BMLA doesn't possess the formal power on this matter, its executive departments do not have incentives in handling the training programs.

As the curriculum designing has to follow the guidelines of the Beijing Municipal Bureau of Justice, the BMLA can't freely design the courses as it sees appropriate and useful for its members, which discounts the value of training and makes the trainees treat the training as an assigned task to be completed, not as an opportunity for learning more to increase their professional competence. The training then loses its original purpose.

It should be pointed out that the low quality of individual lawyers is due to inadequate legal education. The task for improving legal education may best be achieved by the professional associations of lawyers because they are in a position to know the status of the legal profession and what is needed in the legal practice and what legal education should provide for the legal profession. As discussed previously, in the United States law schools have to gain recognition by the ABA to become an accredited law school. Furthermore, legal professional education in the United States law schools is designed in accordance the quality requirement for lawyers as expressed by the ABA. Such a way in legal education has linked the law schools with the legal profession. By contrast, the Chinese government controls the legal education and the entry into the bar, which has left out the professional association. Under the circumstances lawyers are produced in accordance with the government's will and image of it, as government officials, rather than legal professionals who obey only law. It is understandable why in China the legal authority of lawyers doesn't command much respect.

As has been discussed previously, professional education figures prominently in constituting the "profession". In China the development of the professional education is one necessary link in the legal professionalization process. However, both law schools which turn out legal professionals and the bar examinations which qualify legal practitioners are under the control of the government. The BMLA as a professional association has little power to contribute to the development of the legal profession.

Legal professional association is an association of lawyers themselves. But such an association simply doesn't have a say in what kind of member it likes to have. This is absurd. From China's political context and the status of social development, this situation will continue for quite a long period.

A. Community Circle-making

The power for community circle-making is important for this profession itself. It reflects whether the profession itself can decide their own fate. The SMC should take charge of community circle-making which regulates the lawyers' behavior according to the law.

The Regulatory Framework Committee is responsible for the community circle-making of the community law. It also belongs to the Regulatory Framework Committee in determining the circle-making items. The Regulatory Framework Committee is the model for the other local lawyers' associations.

In fact, there are no models of circle-making and circle-making in China. It provides autonomy to the legal profession in China to develop the Regulatory Framework Committee and to regulate the lawyers' behavior. The Regulatory Framework Committee is the model for the other local lawyers' associations. The Regulatory Framework Committee is the model for the other local lawyers' associations. The Regulatory Framework Committee is the model for the other local lawyers' associations. Therefore, perhaps the lawyers of Beijing are not very happy with the Regulatory Framework Committee.

**CHAPTER SIX POWER RELATIONS IN COMMUNITY CODE-MAKING
AND CULTURE BUILDING**

In this Chapter, the discussion will be divided in two parts: in the first part, I will talk about the power the BMLA enjoys in making the community codes; in the second part, I will focus on measuring how much power the association has in building the community culture.

A. Community Code-making:

The power for (community) codes making the professional groups have is very important for this profession itself. It reflects whether the members of this profession could decide their own fate. The BMLA could make their own codes and regulations which regulate the lawyers’ behaviors during the practice.

The Regulatory Framework Committee is in charge of the code-making task. The head of this committee Ms. Li Han told me in the interview that the BMLA is doing well concerning the code-making issue. The regulations and codes they make always become the model for the other local lawyers’ association.

In fact, there are hundreds of codes, regulations and other governance rules that provide norms to the legal profession in China besides the “Lawyers’ Law”. These regulations, codes and governance rules are made by the Ministry of Justice and the All-China Lawyers’ Association. Despite these files, each province, administrative district or municipality directly under the Central Government also has its own codes, regulations and governance rules that regulate the lawyers’ and law firms’ behaviors. Therefore, speaking of the lawyers of Beijing, they have to not only learn the nationwide

laws, regulations and rules, but also understand the special local regulations and rules for the legal profession. These local rules are from both the professional association and the Beijing Municipal Bureau of Justice.

Lawyer Li Han is the Director of the Regulatory Framework Committee of the BMLA. Ms. Li mentioned during the interview that in fact, every year, both of the Beijing Municipal Bureau of Justice and the BMLA are making new rules and regulations to regulate the lawyers of Beijing according to the development of this profession. However, there is no evidence which states a clear division of power between the two in this issue.

First of all, as a local governmental organization, the Beijing Municipal Bureau of Justice has the power of guiding and governing the lawyers of Beijing which is clearly given by the Lawyers' Law. Before the year of 1995, when the executive power of BMLA was handed to the lawyers themselves, the Beijing Municipal Bureau of Justice had always been the upper authority BMLA in the governmental system. All the local rules and regulations for the lawyers and the law firms were made by the Bureau, which must be strictly followed. After being handed over to the lawyers themselves, the BMLA registered under the Ministry of Civil Affairs as a social organization, which means the BMLA is eligible to make their own professional regulations. The Beijing Municipal Bureau of Justice changed from the upper authority to an administrative guiding unit, which should only give some macro advice. However, the hierarchical power relationship stated in the Lawyers' Law is still valid. There is no mechanism restricting the controlling power from the Bureau. Therefore, the Bureau has still been extending its power to every aspect of the daily issue of the association. Therefore, the Department of the Lawyers Governance and the Department of Legal Issues of the Beijing Municipal Bureau of Justice are making and passing local regulations, governance rules and other

documents to control the legal profession of Beijing. These regulations cover all the aspects of the lawyers' practice and the management of the law firms.

Then does the BMLA have this power given by law? In the "Lawyers' Law", it states that the BMLA, as a local legal professional association, is responsible for "Conducting education in, inspection of, and supervision over, the professional ethics and practice discipline of lawyers;" This rule does not clarify whether the BMLA can make rules on its own. It allows the BMLA to disseminate among the lawyers professional rules and ethics in the training sessions and exercise supervision over the behavior of lawyers. However, the Lawyers' Law has recognized the legal validity of the articles passed by the congress of lawyer representatives. The functions of the lawyers association as provided in Article 2 of Chapter 1 of the Articles of the BMLA include "Formulating and supervising over the lawyers' practicing norms and lawyers' professional management system"; Article 3 of the Articles provides the functions of the BMLA in making rules with respect to the work of lawyers: "Providing guidelines for standardized management of law offices";

In the registration of the BMLA with Registration Office of Social Organizations in 1998 social organization these articles were approved and registered with the Registration Office. That shows that the role of the BMLA in making the rules on the work of lawyers has been recognized and protected by the law. Up to now no rule has been made to restrict the scope of the power to make professional norms and management measures by the BMLA.

As has been recorded in many legal documents and stated by the Beijing Municipal Bureau of Justice and the BMLA respectively about their functions, the Beijing Municipal Bureau of Justice has the power to manage the legal profession in Beijing. It can make local rules and regulations, or methods to constrain the legal

profession. It can also award prizes or impose penalties on individual lawyers. The BMLA, as a lawfully registered professional society, also possesses such powers, even though the Lawyer's Law does not explicitly grant such powers to the BMLA.

According to the Lawyers Law, the powers stated in the Articles should be recognized once it is passed by the lawyer's congress.

As a result, a dilemma appears. The Beijing Municipal Bureau of Justice and the BMLA both have the power to make rules regarding the work of lawyers. It is not clear whose power is superior in this respect, but as the BMLA usually has to seek approval from the Beijing Municipal Bureau of Justice on a number of matters, it is not in any position to challenge the power enjoyed by the Beijing Municipal Bureau of Justice. The rule-making power of the BMLA then is implicitly curtailed. Ms. Li, the Head of the rule-making committee of the BMLA said that in making some rules, the executives who were in charge of the code-making issue have to have a good command of all the existing codes that the Beijing Municipal Bureau of Justice had ever made.

In addition, if there were inappropriate rules made by the Beijing Municipal Bureau of Justice, the BMLA is unable to make any rules on its own to change them, as it is not sure whether it could do so. This is certainly not conducive to the development of the legal profession in Beijing, nor is it to the advantage of the BMLA's professional capacity.

In the following I will introduce an example to illustrate the difficulties involved in the rule making by the BMLA and the tensions between it and the Beijing Municipal Bureau of Justice in the matters regarding making professional norms and management measures for lawyers. This example also shows that such tensions between the two actually limits and influences the BMLA's role in promoting legal professionalism.

The example is about the making of The Principles for Disciplinary Sanctions for Members of the Beijing Municipal Lawyers Association (Disciplinary Sanctions Principles). The Disciplinary Sanctions Principles were made in August 2003 by the Committee for Regulations of the BMLA and implemented under the supervision by the Committee on Disciplines of the BMLA. The core content of the Disciplinary Sanctions Principles, based on the principles that “lawyers shall not violate the law, or administrative regulations and professional code of ethics, or behavior code that the majority of the members subscribe to”, has spelt out 67 specific measures and procedure for disciplinary sanctions on violations of those basic principles. These were actually based on the old rules that the BMLA made previously, including Disciplinary Measures for Lawyers of the BMLA (Trial) and the Rules of the Disciplinary Committee of the BMLA (Trial). The Head of the BMLA Disciplinary Committee, Mr. Wang said that the making of the Disciplinary Sanctions Principles marked a very significant step for the BMLA in its professionalization process. In Western countries where legal profession is highly developed, large amount of energy and resources has been invested in regulating lawyer’s behavior, as this is a significant manifestation of the professional autonomy.

However, in making the Disciplinary Principles there was one existing document that they could not ignore and that is the Several Provisions of the Beijing Municipal Beijing Municipal Bureau of Justice on Imposing Administrative Penalties on Lawyers and Law Firms (Trial).

These two documents by nature do not conflict each other, as the rules of the Beijing Municipal Bureau of Justice aimed at “administrative penalties” on lawyers while the BMLA’s rules are aimed at imposing professional penalties on its members by the association. The two types of penalties are different by nature. However, at the implementing level, there are some vague areas. An example may better explain this.

Article 13 of the Disciplinary Sanctions Principles provides that the Disciplinary Committee of the BMLA has the power to impose 6 types of penalties on lawyers, ranging from reprimand, warning, criticizing, denouncing to termination of member rights to permanent cancellation of the membership, and publicly report the case via mass media. The heaviest penalty is the permanent cancellation of the membership. However, all lawfully admitted lawyers in Beijing are by default members of the BMLA. A lawyer loses his or her membership with the BMLA only when he or she is stripped off the qualification certificates. Such a power is retained by the Beijing Municipal Bureau of Justice and the BMLA is not authorized to do so. In the Several Provisions of the Beijing Municipal Beijing Municipal Bureau of Justice on Imposing Administrative Penalties on Lawyers and Law Firms (Trial) there were detailed provisions with regard to the deprivation of the lawyer's qualification certificates. Consequently, the provision on "permanent cancellation of the membership" in the BMLA's Disciplinary Sanctions Principles cannot be autonomously implemented.

Viewed from another angle, if the Beijing Municipal Bureau of Justice imposes penalties on lawyers based on its own rules, for instance, if the Beijing Municipal Bureau of Justice decides to cancel the practice license of a lawyer or a law firm, there is no way that the BMLA can impose a lighter penalty on the same lawyer or law firm.

The above example has shown that under the circumstances where the delineation of power in rule making is not clear, the BMLA is in a disadvantaged position. Its power to make professional rules for its members is seriously curtailed because of its subordinate status to the Beijing Municipal Bureau of Justice. Technically it is constrained by the rules previously made by the Beijing Municipal Bureau of Justice. At the implementing level the BMLA, if in conflict with the Beijing Municipal Bureau of Justice, has to face many difficulties.

B. Community Culture-building:

The BMLA enjoys relatively independent power in fostering a community culture and advancing legal professionalism among its members. Since its founding it has been actively constructing its identity, organizing various short term or long term training programs aimed at raising individual's legal consciousness, cultivating practicing skills and promoting professional ethics. In this regard, the BMLA does not directly conflict with the government. It shares with the Beijing Municipal Bureau of Justice the responsibility for developing a healthy legal community. It has provided a general framework and built up an environment for Beijing lawyers to form close ties in their common pursuit. The annual meeting of the lawyers representatives serves as a platform for Beijing lawyers to share their wins and losses.

The BMLA also sets up many kinds of fund to offer help to lawyers. In order to raise Beijing lawyers' capability to engage in international practice, starting from 2000, each year the BMLA allocates 2 million Yuan to set up a Scholarship for Overseas Training (lushi chuguo kaocha buzhuji). Young Beijing lawyers can apply for these funds to support their learning overseas. At the same time, the BMLA started joint training programs with renowned law schools overseas, sending out a number of lawyers each year to study in world class law schools in foreign countries. One can see from such activities that the BMLA is deeply aware that the legal professional education is key to successful professionalization. As has been discussed previously, the BMLA has little control of the professional education of lawyers and the curriculum design of law schools. But it could contribute greatly to lawyers' education in the process of practicing.

By sending people abroad and providing them with financial assistance, the BMLA has played a very significant role in raising the professional competence of its members.

The BMLA has also set up Lawyers Subsidiary Funds For Overseas Study Tours (lushi chuguo kaocha buzhuji) in 2000. Each year 5% of the membership fees the BMLA gets from its members is spent on sending lawyers overseas on study tours. This activity is aimed at training senior management personnel for the law firms in Beijing. In 2001 alone the BMLA sent out 5 groups of law firm partners overseas on study tours. Mr. Li, the Director of the Legal Profession Development Research Committee, told me that the amount of the money is going to be increased this year. The BMLA has also set up a Talented Specialists Fund (zhuan ye rencai jijin) in 2001, which aimed at attracting more talented people from China and abroad to join the legal profession.

Among the funds set up by the BMLA is the pension for lawyers and their family members, which provides help to those lawyers who are seriously sick or the family members of deceased lawyers. As a rule, seriously sick lawyers can have their medical expenses reimbursed from the financial department, but in special cases, the fund can be given to the lawyer in advance upon the approval of the Council members. Lawyers are considered as high income earners, but Mr. Li, the Director of the Legal Profession Development Research Committee told me that in Beijing, less than 20% lawyers get more than 80% cases, and more than 80% lawyers share the rest of the 20% cases. Therefore, there is a great salary gap between these two groups. If there is no financial assistance provided to the newly started lawyers, they would find it very difficult to survive. Therefore, in order to promote inter-professional cooperation and equality among all lawyers, the BMLA decides to allocate a small amount of money out of the memberships fees each year for the purpose of helping the low-income lawyers.

The BMLA also pays high attention to strengthen lawyers' professional responsibility. It's secretariat regularly receives complaints from lawyers clients and transfers the complaints to the Discipline Committee which will investigate the complaints and impose disciplinary measures on those who are found to have engaged in unethical or bad practice. After investigation the Discipline Committee will hold a hearing, very much like a trial, attended by the lawyer in question and the client who lodged complaints. In 2004 the Discipline Committee of the BMLA accepted 207 complaints from clients and settled 192 cases. Some 25 law firms and 32 lawyers were given various degrees of professional disciplinary penalties. The BMLA made its list of sanctions law firms and individual lawyers public to let the public beware of them. This has very serious deterring effect. The BMLA also made a series of rules guaranteeing fairness and transparency in its complaining and investigating process. If a lawyer is finally found guilty as accused, the bad deeds of the lawyers would be made public on the official website of the BMLA.

As China has a long tradition of discouraging women to work in professional field, female lawyers have more difficulties than their male colleagues in representing clients. Sometimes they are not trusted by clients either. The BMLA is conscious of this situation. It has organized a Female Lawyers Committee, which provides assistance to female lawyers when needed. It also encourages a culture of tolerance within the BMLA to protect women against unenlightened prejudice of some male lawyers and the outside society. Ms. Zhang is now the Vice-Director of the Female Lawyers Committee. She told me that actually up to now, the female lawyers are still not treated fairly compared with the male lawyers. According to an internal statistics, the educational level of the female lawyers is even higher than that of the male lawyers. There are more female lawyers with a master's degree. However, the salary a female lawyer receives is much lower than that

of a male lawyer. The Female Lawyers' Committee receives and files complaints from the female lawyers about the unfair treatment by the lawyer firms and other lawyers and it will report the cases to the Association to take some actions in order to deal with the situation. Another very important thing the Female Lawyers' Committee is responsible for is to protect the female lawyers from the sexual harassment inside their firms and in their practicing process.

Ms. Zhang was happy to be a member of the Female Lawyers' Committee because the Committee has enough power to take its responsibility for the protection of the women's rights. Under the circumstances where power constraints are not apparent, the BMLA could provide a very supporting environment to the Women Lawyers' Committee which can solve real problems for its members. The whole committee represents a sense of fairness and democracy.

The Director and Vice-Director of the Women Lawyers' Committee are elected by general election, in which one member has one vote. The activities and contributions of the members of the committee are supervised by all women lawyers. The BMLA is usually supportive of various activities of the Women Lawyers' Committee. It regularly asks its Council members to join the activities sponsored by the Women Lawyers' Committee and share with the members various bonding activities. The BMLA's support to the Women Lawyers' Committee is also one sign showing that the BMLA is trying to build a culture of tolerance.

The BMLA is sensitive to its image-building. The presidents and the committee members regularly go to other provincial lawyers' associations to visit and exchange experience every year. Such type of exchange aims at fostering mutual trust and mutual help within the legal profession so as to form a stable and broad network among Chinese

lawyers nationwide. Of course, it must be pointed out that this network is only limited to professional activities. Issues that are likely to be discussed within the network primarily relate to the development of the associations, improvement of governing structure and management mechanisms. As for discussions of sensitive issues and policy matters, the discussions are held within the legal profession. The Beijing Municipal Bureau of Justice may impose restrictions on certain discussions or simply does not allow the BMLA to collaborate with the lawyers' associations in other municipalities or provinces.

It regularly sends out small working groups to visit governmental departments and social organizations. In August 2004 the BMLA organized six working groups to visit the Beijing Municipal People's Congress, the Municipal People's Political Consultative Conference, the Public Security Bureau, the People's Procuratorates, and the People's Courts to solicit their views about the professional ethics, professional skills and management quality of the legal profession. Through this kind of activities the BMLA is able to know how lawyers are viewed by the officials of the government and the law enforcement branches and make efforts to improve their work.

Conclusion:

This Chapter includes two main parts, discussing about how much power the BMLA is having in the code-making process and in the culture-building process. Regarding to the code-making process, there is a tension of power between the BMLA and the Beijing Municipal Bureau of Justice. The Beijing Municipal Bureau of Justice is enjoying the administrative power over the lawyers and the law firms, and even over the BMLA, which is given by the Lawyers' Law. However, as a professional association, the BMLA has the right to make its own regulations. Inside the association, there is a

Regulatory Framework Committee to make there community codes and regulations, and the association also has a Disciplinary Committee to take care of the cases if the lawyers violated the regulations.

However, under the control of the supervisory organization, the BMLA's power on code-making is limited. For example, whether a lawyer could continue his or her practice in Beijing is decided by the Beijing Municipal Bureau of Justice, but not the BMLA. So when the Regulatory Framework Committee makes the codes, the members can only set other ways of punishment than stop a member's practice.

I gave an example of the making of the Principles for Disciplinary Sanctions for Members of the Beijing Municipal Lawyers Association that shows the conflict between this document and the existing Several Provisions of the Beijing Municipal Beijing Municipal Bureau of Justice on Imposing Administrative Penalties on Lawyers and Law Firms. This case illustrates my major point in this Chapter that the BMLA has power in making their own regulations; however, this power has a bottom line, which is it has to be consistent with the existing documents made by the Beijing Municipal Bureau of Justice and other governmental organizations.

In the discussion about the power relationship in the culture-building process, I found out that the association is enjoying much power concerning at this stage:

First, in the spirit of building up a community culture that values professionalism the BMLA has set up various kinds of funds to facilitate its members' further education at home and abroad to raise the competence of the Beijing lawyers, which has been well accepted by the members. Secondly, the BMLA has set up funds for low-income lawyers and sick and deceased lawyers to help promoting a mutual assistance culture, which has maintained a close affinity among its members. Thirdly, the BMLA made efforts to normalize the legal profession by practicing a system of awards and penalties. Its

Discipline Committee accepts complaints from clients to make sure that all its lawyers act within the law and legal ethics. Fourthly, in order to encourage tolerance within the legal profession, the BMLA has set up a Women Lawyers' Committee to help to solve difficulties and problems women lawyers often encounter in their practice. Fifthly, the BMLA also initiates inter-professional exchange to promote mutual assistance and cooperation among lawyers' associations in China and abroad. Even though in its interaction with the governmental departments and lawyers' associations in other municipalities and provinces the BMLA does not have full autonomy, it has already utilized the existing power to its fullest extent.

CHAPTER SEVEN POWER ON PROTECTION OF LAWYERS' AUTONOMY

The autonomy in practice by lawyers is probably the most important link in the professionalization process. To a large extent the authority of professionals comes from their image of professional autonomy. In China, the autonomy of lawyers has been constrained by several factors. Most importantly, the constraints come from the government. Political system in China gives too much power to the government which sometimes possesses absolute power in many aspects. In many cases lawyers are under the political influence when they serve their clients, especially so when the clients interest is in conflict with that of the government. This puts lawyers in a very difficult position. When this happens, the autonomy and freedom of lawyers in dealing with individual cases should be protected. Furthermore, the autonomy and freedom of lawyers in handling cases can also be influenced by the public opinion, such as the views of scholars and mass media. In this respect, legal professional associations can play a very significant role, perhaps much more important than the governmental departments such as the public security bureau, or the people's procuratorates or the courts, in protecting the rights and interest of lawyers. Having realized this, the BMLA established a Rights and Interests Safeguarding Committee to especially protect lawyers autonomy and freedom in handling cases. The Rights and Interests Safeguarding Committee is "responsible for creating and maintaining a sound environment for practicing lawyers and safeguarding the personal rights and interests and practicing rights of lawyers and the overall image of the legal profession".¹⁷ This committee is called "scooping up the lawyers committee" by people in this profession.

¹⁷ "Articles of the Beijing Municipal Lawyers' Association", Chapter 3;

I got a chance to interview Lawyer Zhang Yansheng when I was in my internship in the BMLA. Ms. Zhang had been a lawyer for over fifteen years. She was the Vice-Director of the Right and Interest Safeguarding Committee for the last three years. Ms. Zhang told me that, in fact, the BMLA would take action once any lawyer's autonomy was being threatened, no matter whom or what institutions the lawyer was confronting. They hold discussion meetings, looked for some ways for solution, and voted for the best plan.

However, experiencing several times of the right-protection actions, Ms. Zhang began to doubt about how much the BMLA could do and how effective the actions were concerning these cases. Ms. Zhang said during the interview: "Sometimes the case is really a small one, but when I as a member of the BMLA communicate with the organization which violated the lawyers' autonomy or other rights, we could not see much effect." Ms. Zhang gave me a real case she herself experienced one year ago.

In China for a long time lawyers who defend criminal suspects are not treated reasonably. The law has strict restrictions on the time and date for a lawyer to meet his or her client. When a lawyer meets his or her client, working personnel of the detention center would monitor the meeting from a distance that allows the officers to see but not listen to their meeting. This rule does not apply to the prosecution side. As these are state rules, lawyers and the lawyers associations have to observe them. They can't change them. In some cases, however, public security bureau or detention centers do more than that to show disrespect for lawyers.

In the year of 2003, Ms. Zhang was responsible for a criminal case. The criminal suspect was in custody at the detention center of the Beijing Xicheng District. Once Ms. Zhang went to see her client in the detention center, fully aware of the monitoring process of the detention center, as she got used to it. But what she didn't expect was that

after the meeting with her client, she was locked up for some time so that the officers in the custody center could escort the criminal suspect back to his cell. She was locked up in the meeting room until the officers came back from the criminal suspect's cell.

Ms. Zhang later on found out that her colleagues who met their clients in the same detention center also had similar experience. Feeling that it was seriously wrong, she went to the detention center, asking the officers at the center what was their legal basis for doing that. The officers replied that there was no legal basis but it had been their practice for quite some time and they have no intension to change it. Then Ms. Zhang brought the case to the persons in charge of the detention center in the capacity of the deputy director of the Rights and Interests Safeguarding Committee of the BMLA. The detention center leaders, however, didn't see anything wrong in their practice. For them, criminal suspects are no different from criminals. Lawyers who defend criminal suspects put themselves in the opposite position to the government and therefore locking up the criminal defense lawyers would not be unreasonable. Furthermore, the detention center belongs to the public security bureau and the prosecutorial department of the government and should stand above the BMLA. No lawyer or council member of the BMLA has authority over them.

This problem was finally solved after Ms. Zhang brought the case to the attention of a deputy director of the Beijing Municipal Bureau of Justice who ,having heard of the case, agreed that the practice of the detention center was very absurd. He then ordered the Xicheng District Detention Center to stop their unreasonable practice, which they did.

The case that Ms. Zhang got involved is in fact a small difficulty encountered by a lawyer in handling her cases, which doesn't involve conflicts of interests between different authoritative institutions. Even in this kind of cases, the role of the BMLA in protecting its members' rights is considerably limited. In this case we don't see the

tensions of power between the Beijing Municipal Bureau of Justice and the BMLA. The inability of the BMLA in protecting its members originates from its lack of social identity. Legal profession in China needs to gain social respect in the professionalization process. Terms such as specialization and professionalization entered China fairly recently which have not become favorite topics in the popular consciousness. The traditional official ideology that extols the omnipotent power of the government still reigns. Even up till now the official propaganda still champions the role of the government and a matter becomes important only when the government is concerned.

In my interview with Ms. Zhang she mentioned that before the reform the legal profession was not regarded as a profession. Lawyers were seen as government working personnel serving the government and the people. That kind of understanding gave lawyers a lot of convenience when they handled cases because they were not considered opponents or even enemies of the government. At that time lawyers in fact had more autonomy. After the reform lawyers are seen as free professionals who work for themselves and their clients, rather than the government. As the legal profession has not yet established itself as a respectable and autonomous entity, it does not have the professional authority it deserves. At the same time, it has been changed from the government's allies to its opponents, especially so in criminal defense cases. In addition, as Ms. Zhang mentioned, after the reform lawyers as free professionals now earn much more than government officials and ordinary people. That is one more reason that contributed to the hostile attitude toward lawyers.

The case that Ms. Zhang handled did not involve serious conflict of interests between the government and the legal profession, or more specifically, between the BMLA and its administrative supervisory superior, the Beijing Municipal Bureau of Justice. The action of the Rights and Interests Safeguarding Committee of the BMLA as

represented by Ms. Zhang did not get obstructed by the Beijing Municipal Bureau of Justice. It was not respected by concerned governmental departments. That's all. In other cases, however, the Rights and Interests Safeguarding Committee faces more severe and direct challenges from governmental departments, including its administrative superior, the Beijing Municipal Bureau of Justice. Very often, protection of lawyer's autonomy and interests means conflict with the interest of the government. My study and the information I get from the interviews have shown that in this respect the Rights and Interests Safeguarding Committee is even less effective. Below are two examples.

There is a consensus among Chinese lawyers that it is very difficult to be a criminal defense lawyer in China. First of all this has to do with the Criminal Procedure Law of China, which was made in 1979 and revised in 1996 and 1999 respectively. The Criminal Procedure Law has provisions allow lawyers to participate in criminal investigation, but has considerable restriction to lawyer's access to vital information concerning criminal cases. The law adopts a vague position on the principle of presumption of innocence. It neither denies it nor explicitly embraces it. The traditional Chinese practice that presumes guilty of all criminal suspects has been very persistent in the mentality of law enforcement agencies. For judges, government officials, as well as the populace, criminal defense lawyers basically engage in defense of the guilty. The work of criminal defense lawyers then faces considerable antagonistic sentiments. In addition, there is one fatal mechanism for dealing with criminal defense lawyers and that is Article 306 of the newly revised Criminal Law of the PRC. That article emphasized that lawyers are punishable by the crime of "perjury". If a lawyer is not careful enough in his or her practice, this crime may be used against him or her.

Lawyer Zhan Ning is a newly elected Council Member of the BMLA. He was educated in Canada and is in charge of the foreign liaison affairs committee for the

BMLA. He is not satisfied with the fact that lawyers are under political or mass pressure. He believes that lawyers should be responsible for their clients, but not for politics. If lawyers are bound by the will of the government or the court, then there is no need for the legal profession to exist. According to him in the West, especially in America or Canada, lawyers have enormous power in their practice. In order to minimize the personal, economic or mental damages suffered by their clients, they would try every means to find or interpret existing laws or precedents to provide evidence which would support their arguments. In cases which involve the conflict of interest between the clients and the government or society, as long as the arguments and evidence provided by the defense lawyers are reasonable and persuasive, the courts will respect them and impose lenient penalties. If the defense provided by a lawyer does not violate the law, the lawyer is free to say whatever he sees as appropriate. He will not be implicated simply because he offers defense to a criminal suspect.

In China, however, due to the underdevelopment of the legal system and traditional attitudes towards criminal suspects, as mentioned in the above, lawyers are bound by a lot of unnecessary constraints. In a case where the government already has a preference, a lawyer's defense may well become an anti-governmental action. Thus, the freedom to practice law and even the personal rights of the lawyers are under threat.

In fact each year there are cases where lawyers are prosecuted in China because of suspected violation of law in the process of handling their cases. Around 10 percent of these prosecuted lawyers will finally lose their licenses to practice law. The MBLA and some well-known legal scholars suspect that some of these cases were wrongly decided. A case at hand is about Mr. Zhang Jianzhong, a famous criminal lawyer who was prosecuted by the government.

Mr. Zhang was the director of Beijing Gonghe Law Firm. He gained his good reputation after defending Cheng Kejie, the then Vice-Chairman of the National People's Congress of China (NPC) who were accused of corruption and later found guilty. Although Cheng was sentenced to death eventually, Mr. Zhang still attracted great attention from all over the world for his good performance and outstanding professional knowledge and skills. In May 2002 Zhang was arrested in his home on the ground that he committed perjury on behalf of his client when he was representing another client, Mr. Huo Haiyin, the former president of the Zhongguancun Branch of the Beijing City Cooperation Bank. Very ironically, Zhang was the Director of the Rights and Interests Safeguarding Committee of the BMLA when he was arrested.

In 2003 two years after two year after Zhang was arrested, the First Intermediate People's Court of Beijing declared that Zhang Jianzhong was guilty of perjury. Mr. Zhang appealed to the Beijing Municipal Higher People's Court, and the result remained the same. The punishment was a two-year sentence, which had actually been finished when the court announced the result.

The reason why Mr. Zhang Jianzhong's case attracted so much attention and brought out rounds of discussion is that the evidence the court based its final decision on was not sufficient. In the defendant lawyer's statement, it was clearly argued that there were lots of points that didn't support the final judgment of the court. The court was not cautious enough to draw a conclusion on perjury based on the incomplete existing materials and evidence. Therefore, the fact that the court insisted on making such a judgment made the public suspicious that the final decision might have to do with some political issues. Mr. Zhang had been the defendant lawyer for Cheng Kejie and Li Jizhou, whose interests were totally opposite to that of the government.

For the government, Zhang's new client, that is, Mr. Huo Haiyin, was again a potentially threat to the government's interest and image.

For this reason, Zhang's case shocked the legal field at home and abroad. A lot of lawyers and legal scholars in China and in other countries questioned the lawfulness of the court's judgment in this case. Many foreign lawyers wrote about the case questioning what was the real reason behind Mr. Zhang Jianzhong's verdict. Meanwhile, six prominent Chinese legal scholars submitted a petition letter arguing that there was not enough evidence to determine Zhang's guilt. The outcome of the case disappointed them. Limited by the space I am not going to discuss the case in detail here. I will concentrate only on the role the BMLA played in this case.

According to Ms. Zhang Yansheng, who was the Deputy Director of the Rights and Interests Safeguarding Committee of the BMLA, the Committee has an emergence plan for protecting lawyers rights and interests, which was called "24 Hour Initiating Plan." The initiating plan requires that when a lawyer "has got into trouble", the Committee must formally start its process to safeguard the lawyers rights within 24 hours. Normally, the Committee would hold a meeting to discuss the issue. The meeting, as is the case of the meetings of all committees of the BMLA, would attended by all the members of the Committee and sometimes attended by the leaders of the Beijing Municipal Bureau of Justice. The proposals passed by the meeting will have to be approved by the Beijing Municipal Bureau of Justice before it goes into effect.

After Mr. Zhang was formally arrested, the Rights and Interests Safeguarding Committee convened an emergent meeting to discuss starting the 24 Hour Initiating Plan to protect Mr. Zhang's rights. Quite different from previous cases, the meeting was only attended by the Deputy Director and the members of the Committee (the Director being Mr. Zhang himself who was arrested.) None of the President or Vice-Presidents, or the

General Secretary and Deputy General Secretaries were present, nor was there any leaders from the Beijing Municipal Bureau of Justice. Such an important meeting normally convenes at the suggestion of the Director of the Committee and endorsed by President of the BMLA. As this is a special case, with the obvious absence of the Director, the members of the Committee held the meeting on their own. At the meeting most lawyers held that there was not enough evidence to support the arrest of Mr. Zhang and put him into custody. The meeting records show that the lawyers who were present at the meeting proposed to collect signature of all lawyers in Beijing on a petition letter to the court to explain the unreasonableness of this case. The proposal, however, didn't even pass the President of the BMLA. The Beijing Municipal Bureau of Justice didn't favor it either. The 24 Hour Initiating Plan for Mr. Zhang never saw the daylight.

As revealed by some working personnel of the Secretariat of the BMLA, the Beijing Municipal Bureau of Justice didn't issue any notice concerning the matter. After the arrest of Mr. Zhang, despite that Chinese legal experts and foreign mass media questioned the lawfulness of the case, the Beijing Municipal Bureau of Justice never informed the BMLA of their views and decision. When the verdict was given in 2004 which found Mr. Zhang guilty as accused, the Beijing Municipal Bureau of Justice announced rescinding permanent practice license of him. The silence of the Beijing Municipal Bureau of Justice disallowed the BMLA to place Mr. Zhang's case on any meeting agenda of it. From the information I gathered, within the period between 2002 and 2004 when Mr. Zhang was arrested to his trial, the BMLA passed on to the Beijing Municipal Bureau of Justice and the Ministry of Justice the letters of Mr. Zhang's family requesting the trial to be held as soon as possible. It also offered its view on the case to the Beijing Municipal Bureau of Justice in the name of the BMLA, but the Beijing Municipal Bureau of Justice constantly avoided handling this case, never offering any

measure on its own to solve the issue, or having any meeting to discuss about it. The efforts of the BMLA eventually were futile. The general Secretary of the BMLA pointed out in my interview that the BMLA was not in a position to bring their view on the case directly to the court. As it happened, after the rescinding of Mr. Zhang's license by the Beijing Municipal Bureau of Justice, the Discipline Committee of the BMLA issued a statement on the official website of the BMLA to permanently disqualify Mr. Zhang for the membership of the BMLA.

From this high profile case which attracted the attention of legal fields at home and abroad, one can see the very limited role of the BMLA in protecting its members. The BMLA is said to be the "maiden home" of the lawyers, but it really is not in any position to protect its family members.

The second example I want to cite here is also a case involving criminal liabilities of lawyers. The case involved a group fighting between the two parties to a dispute. After the fighting, the lawyer, Mr. Zhang who represented one party was accused of organizing the fighting on behalf of his client and the case was brought to a court in Beijing. The court immediately decided on incomplete information and one-side evidence and held Mr. Zhang responsible for the fighting in violation of the law. On learning about this, the Rights and Interests Safeguarding Committee of the BMLA held a meeting discussing possible means to defend Mr. Zhang, as the Committee believed that the evidence provided to the court was one-sided and unreasonable. Under that kind of situation, the court should not have decided on the case and Mr. Zhang should not be held responsible for the accusation against him.

The Rights and Interests Safeguarding Committee in the discussion noted that the matter is in fact more complicated than it appears. Because the battered party, the accuser

in this case is a relative of somebody who works for the government of the Haidian District in Beijing, Mr. Zhang is naturally in a the disadvantaged position.

One month since the first meeting of the Committee, the BMLA was preparing for another meeting when the court suddenly conducted a trial which found that Mr. Zhang was guilty as accused and sentenced him to two years imprisonment. When the Secretariat of the BMLA learned about the court's decision, it cancelled the planned meeting and followed the steps taken by the Beijing Municipal Bureau of Justice, rescinding Zhang's license and publicly announced disqualification of Zhang's membership with the BMLA. Once Zhang's membership is ended, the BMLA is no longer under the obligation to defend him. The case then would be forgotten soon.

It is apparent that even though the BMLA had questions about the fairness of the case, what its Rights and Interests Safeguarding Committee can do is limited. It raised questions about the case and its proposals for protection of rights, if any, must be approved by the Beijing Municipal Bureau of Justice. As a government branch the Beijing Municipal Bureau of Justice is most unlikely to support the BMLA's proposals for rights protection if such proposal does not agree with the municipal government's interest. If the Beijing Municipal Bureau of Justice supports the BMLA in its action not agreeing with the government's interest, the Beijing Municipal Bureau of Justice itself will be in trouble. The BMLA with an ambiguous political status under the guidance of the Beijing Municipal Bureau of Justice can't be an independent professional association, nor can it provide adequate and effective protection for its members.

Conclusion:

The three cases I discussed above reflected that concerning the protection of the lawyers' autonomy, the BMLA as a professional group has really limited power and could help very little. That is because:

First of all, there has not formed a culture or an environment which emphasized the respect to the profession and professionals in Chinese society. As the legal profession and the lawyers are not respected, the professional association, the BMLA, has no origin of authority.

Secondly, the "officials-centered" culture is still prevalent in Chinese society. As we know, the Beijing Municipal Bureau of Justice is still the supervisory unit of the BMLA and there is clearly a close relationship between the two. However, as the lawyers became the free professionals, the BMLA turned from an association of the "government's people" to a non-governmental professional group. So it could not get the attention from the society without the governmental identity. Therefore, when there is conflict of interests between the government and the lawyers, the BMLA turned to be very weak in solving the problems. "

Thirdly, in the two criminal cases stated above, the role the BMLA played and the function it has clearly reflected the relationship between the BMLA and the governmental institutions. On one hand, we can see that the court's final judgment caused lots of arguments on some cases which were related to the issues related to the government's interest. The interest of the lawyers would sometimes be sacrificed. Since the year 2000, the structural reform of the professional groups in major cities of China, especially in Beijing, has been taking place. The BMLA has also got some more power because of this reform.

Mr. Li, the Member of the Council of the BMLA, said that the Beijing Municipal Bureau of Justice was open enough to give some power to the BMLA to deal with many

daily affairs. However, the power the BMLA is getting is mostly on the executive level. It is true that the committees and the executive board of the BMLA could make decisions on some issues by voting and the Bureau could not disprove those decisions. For example, the BMLA could decide how to use the members' annual fee and so forth. However, this deciding power has not declared the independence of the BMLA. For important matters, the topics for discussion at the BMLA meetings are decided in response to the call of the Beijing Municipal Bureau of Justice or the Ministry of Justice. For some insignificant matters the BMLA could decide on its own. Like the two criminal cases discussed above, the BMLA has the power to organize its members to discuss the case, to adopt any rights protection proposal. But the final power to decide is retained by the Beijing Municipal Bureau of Justice. Even if the Beijing Municipal Bureau of Justice, for some reason, does not reject the proposals of the BMLA, lack of support from it could also prevent it from being enforced. Besides, if the Rights and Interests Safeguarding Committee wants to adopt a specific proposal, it has to do it together with the Presidents of the BMLA and the leaders of the Beijing Municipal Bureau of Justice at a formal meeting. All formal meetings of the Committees and the Standing Council, as discussed above, use the red-letterhead documents of the Beijing Municipal Bureau of Justice as agenda. Under the situation the Beijing Municipal Bureau of Justice has the agenda-setting power, it is hard to bring out the discussion on the issue the Bureau avoids talking about.

As we have discussed in the previous chapters, the autonomy of a professional is a very important factor which shapes the concept of profession. In the Western concept, "lawyer" is obviously a kind of profession. The lawyers as professionals have very great power in their field concerning the legal issues. Professor He Meihuan of Tsinghua University mentioned in her "Report on China's Legal Education" that in the Western

countries, especially in the US, the lawyers not only could use the laws, but also should be able to interpret the laws from a different perspective, to predict the laws, and even to help creating the laws. But in China, the most basic thing, the autonomy of the lawyers is even at risk.

Actually, in China, the greatest problem the legal profession is facing is the lawyers' lack of autonomy. Being the professional association, the BMLA should give that problem the greatest concern in order to protect the members of this association and help the legal profession in Beijing to be professionalized. However, during my interviews, besides the fact that the BMLA has really few things to do while its power is in question, I also got the fact that some members of the council and the staff members of the Secretariat just don't think the autonomy problem should be the first thing they should deal with. Ms Li, the dean of the Regulatory Framework Committee said: "Whether the lawyer is guilty is the court's say. If the rights of a lawyer are violated, he should call the police or tell the court the truth. I don't think expecting the BMLA to act in this issue is a reasonable way to solve the problem."

Therefore, with regard to the protection of the lawyers' autonomy, the BMLA has a set of plans to put into practice, and the Right and Interest Safeguarding Committee always took action after the autonomy of a lawyer is threatened. They have the power to organize a discussion, to decide a plan for action, and they could vote for the best plan inside the committee without the supervision from the Bureau. However, the agenda-setting power is in the Bureau's hand. Without their call, there will be no meeting for the discussion between the BMLA and the Bureau on this right safeguarding issue.

The autonomy of the lawyers is one of the most important things this profession should fight for toward the goal of professionalization. However, the BMLA has really little power to help the legal profession in Beijing on this aspect to be professionalized.

CHAPTER EIGHT BMLA'S POWER IN ORGANIZING SOCIAL ACTIVITIES CONCERNING SOCIAL GOOD

Theories of professions and professionalism point out that the concern for social good defines “profession”. A professional community should keep social good in mind while practicing its profession. Lawyers around world are required to do good for the society while doing well for themselves. In the United States where the legal profession is well developed, lawyers are required to do certain amount of *pro bono* work each year, no matter how busy they are.

This is even truer in China, as it often puts collective interest before that of the individuals. The official ideology stresses altruism in all kinds of work. Lawyers in China are encouraged, but not required to do *pro bono* work. In this respect, the Beijing Municipal Bureau of Justice as a government department is in agreement with the BMLA. If the BMLA proposes or engages in any projects that are potentially beneficial to the society as a whole, the Beijing Municipal Bureau of Justice will not interfere with it. As the leader of the legal profession, the BMLA actually is active in participating and organizing activities advancing the public good. I am going to give two examples in this part to show BMLA's effort and power in organizing activities concerning social good.

The BMLA is involved in a project for the education of young kids in the rural areas of China. This is the ambitious project called the Hope Project, which is also partially supported by the government.

The Hope School the BMLA helped to build up and donated money to every year is located in Qinghai province. On one hand, this activity shows the professional group's

concern about the well being of the whole society; on the other hand, it is important for the legal professional group to call for the public attention to the poor children's education through such an activity.

Every year, the BMLA used certain amount of the lawyers' annual membership fee as the fund to help the Hope School. Each July, several members of the board and staff from secretariat will go to the Hope School for a visit.

This activity to some extent makes the BMLA an independent entity. They have the power to decide in which way they should offer help to the school. First of all, they could deliver the legal knowledge and other information to the people at that place freely. Secondly, they build up their own connection with the local government and other organizations there to support the school together. The association got rid of the semi-governmental image in this activity.

Another activity that shows the BMLA's concerning about social good is the moving of Beijing Zoo issue. According to the official file, the Beijing Zoo was proposed to move to Daxing Xian from its original place, Xicheng District. This issue caused lots of discussions once it was brought out through the media. As this issue is very controversial and there is clear confrontation between the government's position and the whole society's interests, the BMLA's participation in this issue and the neutral position it took reveals that the organization is enjoying some power independent from its supervisory agent, the Beijing Municipal Bureau of Justice.

Since May 2004, there has been a hot debate in Beijing about the moving of the Beijing Zoo. It attracted the attention from every corner of the society. Environment Protection NGOs, Scientists, mass media, and other people all joined this discussion. This issue was initiated by the Development Committee of the Beijing Municipal

Government and it was kept as a secret at the very beginning. Daxing Xian, Yanqing Xian and Shunyi Xian were asked to compete for the right to host the Zoo. However, after an internal conference of the Beijing Government, Daxing was already the final winner without any public voting. All these procedures were secretly proceeding without informing the public, nor any staff of the zoo. Until May, no one was given notice that the Zoo was going to move to Daxing from the centre of the city. However, in May, having learned this from a staff member of the zoo, a group of people set up a website called “green website” which brought this shocking news to the knowledge of the public.

This decision obviously favored the government and the businessmen’s interests. The original place the Zoo was located is at the centre of the city, where the land is worth a really high price. It will bring the government a lot of economic interest to develop the real estate business than let the zoo be there. However, for the animals, as the staff in the Zoo stated, moving will cause lots of risks. And it is not convenient for the people to visit a zoo in Daxing.

After the news came out to the public, NGOs, environment professionals, and ordinary citizens began to question this issue and the whole procedure. On one hand, this decision was unreasonable; on the other hand, the whole decision-making process was lack of legitimacy.

After the issue came out to the public, some NGOs invited the BMLA to provide legal assistance. The Communications Committee of the BMLA organized a meeting concerning this event and made a decision that the BMLA should give a hand.

As a result, Ms. Chen Yueqin, a board member and other ordinary members of the BMLA participated in several meetings held by the environment protection NGOs since May of 2004 as legal experts. Ms. Chen and other legal professionals were supposed to provide professional opinions on legal ground.

To the public and the mass media, Ms. Chen stated that whether moving the zoo or not is only a result, what concerns the legal professionals is whether the procedure is legal. The decision to move the zoo was made without following the required legal procedure in the whole process. As a representative of the legal professionals in Beijing, Ms. Chen mentioned in the meeting held by the NGOs concerning this issue that the moving of the Zoo is related to the public interest, so the government should make the whole decision-making process transparent and widely consult the public opinion. The opinion from the experts and the zoo staff would be very important for this decision. Even though the idea of moving the zoo was supported by the majority of the Beijing citizens, the procedure to choose a right place to build the new zoo should be fair and transparent too. The Beijing Municipal Government didn't follow the right procedure in dealing with this issue. The whole agenda was covered secretly until the decision was made internally. This action didn't show respect to the public interest. Even the zoo staff was not consulted about this issue. And on the other hand, the destination the zoo was moving to was also decided internally, without any public consultation. This decision again lacks legitimacy.

The lawyer members' opinion attracted much attention from the public. The government has to re-consider this issue on a legal basis. And as the lawyers' activity was not a collective action, the BMLA needn't ask for the approval from the Beijing Municipal Bureau of Justice, and the Bureau didn't pose any intervention on the association concerning this issue either.

After many rounds of discussion, the government could not ignore the public opinion, and all the questions to this decision were so reasonable that the government could not defend itself. Therefore, the Zoo's moving issue was laid aside although an official said it was the trend to move the zoo away from the centre of the city.

This issue shows that the BMLA to some extent can set their agenda and enjoy some level of freedom in making decisions to organize or join in activities which will bring benefits to the whole society.

Conclusion:

In this chapter, I mainly discussed the power the BMLA enjoys concerning doing good for the whole society. I stated at the very beginning that it seems the BMLA enjoys relatively independent power in bridging with the society and organizing activities concerning social well-being. Like the legal professional groups in other countries, the lawyers in Beijing are actually encouraged to hold or participate in activities which are beneficial to the social interests.

I gave two examples to illustrating this point. The first example is that the BMLA supports a Hope School in Qinghai Province. This activity was initiated by the board of the BMLA itself. This annual event helps the association build up its independent and professional image.

The second event I discussed in this chapter is the association's active and independent role in the Beijing Zoo's moving issue. Against the government's goal and interest, the representatives of the BMLA neutrally provided legal advice based on their professional knowledge. In this issue, without the guidance and instructions from the Beijing Municipal Bureau of Justice, the BMLA shows its own power which was based on the members' professional knowledge, but not given by the government.

As I stated at the beginning of this chapter, the BMLA is encouraged to participate in some social activities concerning the well being of the whole society. Even

when there is confrontation between the society and the government, the BMLA still plays a positive role by providing legal advice based on their professional knowledge.

As has been pointed out by some scholars, in China's political context social organizations, usually called GONGO's because they are sponsored by the government, are heavily controlled by the state to the extent that they could hardly function as true civil societies. Granted that there is some truth in that view, we should not be prevented by it from taking a closer look at the complexity and many faces of such organizations. A more careful study has revealed that the relations between the state and the civil societies like the association of the professionals are more complicated than mere order-giving and order-taking pattern or total dependence.

My thesis attempted to understand the complex phenomenon of social organizations as civil society in the reform era of the PRC. It has looked into the power relations between the state and the civil society through a case study of a particular type of civil society organizations, namely the association of the legal professionals. The association of the legal professionals as a social and professional organization has witnessed considerable growth in China in last several decades. In the reform era the association of the legal professionals has served as a platform for law firms and individual lawyers in China to share common interest, exchange ideas and support each other in the professionalization process and in the development of the legal profession.

The legal professional association I chose to study is the Beijing Municipal Lawyers Association (BMLA). The study began with the question how much power does the BMLA have in the legal professionalization process. My hypothesis was that as a professional

organization of the legal profession in China, the BMLA has extensive power, though with considerable limits, when leading the Beijing lawyers on their way to professionalization.

In order to carry out my study, I employed an analytical framework which contains two elements: a multi-layer view of power and a five-component analytical model for understanding the legal profession as a social organization that bears defining characters of a civil society. The multi-layer view on power looks at the power relations and the scope of power by dividing power into agenda-setting power, decision-making power and executive power. The five-component analytical model of a civil society takes professional education and training, community code-making, professional autonomy, and the degree of power in fostering community culture and participating in social activities as major defining characters of a civil society.

The outcome of my study supports my hypothesis. The BMLA does have extensive power and autonomy in carrying out its work and activities, but its power tends to be decision-making power and executive power. The agenda-setting power is mainly controlled by the government through its Beijing Municipal Bureau of Justice. Mr. Li, the Member of Council of the BMLA, said that the Beijing Municipal Bureau of Justice was open enough to give some power to the BMLA to deal with many daily affairs. However, the power the BMLA possesses is mostly on the executive level. It is true the committees and the executive board of the BMLA could make decision on some issues by voting and the Bureau could not disprove those decisions. For example, the BMLA could decide how to use the members' annual fee and so forth. However, the possession of this power doesn't imply a complete independence of the BMLA. For important matters, the topics for discussion at the BMLA meetings are decided in response to the call of the Beijing Municipal Bureau of Justice or the Ministry of Justice. For some insignificant matters the BMLA could decide on its own. Like the two criminal cases discussed above, the BMLA has the power to organize its members to

discuss the case, to adopt any rights protection proposal. But the final power to decide is retained by the Beijing Municipal Bureau of Justice. Even if the Beijing Municipal Bureau of Justice, for some reason, does not reject the proposals of the BMLA, lack of support from it could also prevent it from being enforced. Besides, if the Rights and Interests Safeguarding Committee wants to adopt a specific proposal, it has to do it together with the Presidents of the BMLA and the leaders of the Beijing Municipal Bureau of Justice at a formal meeting. All formal meetings of the Committees and the Standing Council, as discussed above, use the red-letterhead documents of the Beijing Municipal Bureau of Justice as agenda. Under the situation the Beijing Beijing Municipal Bureau of Justice has the agenda-setting power, it is hard to bring out the discussion on the issue the Bureau avoids talking about.

Below is a more detailed account of the powers that the BMLA enjoys vis-à-vis the government.

First, I talked about the BMLA's Power in Legal Professional Education and Training. As it is stated above, professional education/training is one of the most important elements that form the concept of a profession. In my research, I divided my discussion into two parts: one for the lawyers' legal education from the law schools, the other one is for the on-job training of the lawyers.

The law school education is the professional legal education. The law schools are playing an important role in the legal education. In the Western developed countries, for example, in the US, the legal education is actually under a tight control from the professional group, the American Bar Association (ABA). The law schools got their licenses from the ABA. Only the law schools with licenses could give legal education and the students graduated from those law schools are identified by the law firms and the whole society and can become lawyers. But in China, the situation is very different. In China law schools are funded by the government and controlled by the government. The newly rising privately funded schools and

various sorts of adult education institutions are not normalized, which have limited education capacity. The Ministry of Justice and the Bureaus of Justice at various levels have not paid enough attention to this reality but stubbornly hold to the power of admitting lawyers. The lawyers associations of the country are aware of the problem of the professional inadequacy of admitted lawyers, but they do not have the power to control the entry of lawyers to the legal profession, nor could they refuse unqualified lawyers as their members. Therefore in this regard the decision-making power and the agenda-setting power are concentrated in the hands of the Beijing Municipal Bureau of Justice. The low quality of lawyers due to inadequate legal education has seriously jeopardized the legal professionalization process, but the ACLA and the BMLA can hardly play any significant role in improving this.

As far as the on-job training is concerned, the BMLA has *de facto* power to conduct training sessions as it likes, even though there is no formal delegation of power from the Beijing Municipal Bureau of Justice. The BMLA, however, has to act within the guidelines provided by the Beijing Municipal Bureau of Justice, including designing the curriculum. Its final decisions on each training program will have to be approved by the Beijing Municipal Bureau of Justice, which considerably limits the power that the BMLA has. In addition, as the BMLA doesn't possess the formal power on this matter, its executive departments do not have incentives in handling the training programs.

As the curriculum design has to follow the guidelines of the Beijing Municipal Bureau of Justice, the BMLA can't freely design the courses as it sees appropriate and useful for its members, which discounts the value of training and makes the trainees treat the training as an assigned task to be completed, not as an opportunity for learning more to increase their professional competence. The training then loses its original purpose.

As has been discussed previously, professional education figures prominently in constituting the "profession". In China the development of the professional education is one

necessary link in the legal professionalization process. However, both law schools which turn out legal professionals and the bar examinations which qualify legal practitioners are under the control of the government. The BMLA as a professional association has little power to contribute to the development of the legal profession. Legal professional association is an association of lawyers themselves. But such an association simply doesn't have a say in what kind of member it likes to have. This is absurd. From China's political context and the status of social development, this situation will continue for quite a long period.

Second, I discussed the BMLA's power in Community Code-Making. The power for (community) codes making the professional group has, including making the regulations on the way of awards or sanctions, is very important for this profession itself. It reflects whether the members of this profession could decide their own fate. The BMLA could make their own codes and regulations which rule the lawyers' behaviors in their practicing process.

The Regulatory Framework Committee is in charge of the code-making task. The head of this committee Ms. Li Han told me in the interview that the BMLA is doing well concerning the code-making issue. The regulations and codes they make always become the model for the other local lawyers' association.

Regarding the code-making process, there is a tension of power between the BMLA and the Beijing Municipal Bureau of Justice. As has been recorded in many legal documents and stated by the Beijing Municipal Bureau of Justice and the BMLA respectively about their functions, the Beijing Municipal Bureau of Justice has the power to manage the legal profession in Beijing. It can make local rules and regulations, or methods to constrain the legal profession. It can also award prizes or impose penalties on individual lawyers. The BMLA, as a lawfully registered professional society, also possesses such powers, even though the Lawyer's Law does not explicitly grant such powers to the BMLA. According to

the Lawyers Law, the powers stated in the Articles should be recognized once it is passed by the lawyer's congress.

As a result, a dilemma appears. The Beijing Municipal Bureau of Justice and the BMLA both have the power to make rules regarding the work of lawyers. It is not clear whose power is superior in this respect, but as the BMLA usually has to seek approval from the Beijing Municipal Bureau of Justice on a number of matters, it is not in any position to challenge the power enjoyed by the Beijing Municipal Bureau of Justice. The rule-making power of the BMLA then is implicitly curtailed. Ms. Li, the Head of the rule-making committee of the BMLA said that in making some rules, the executives who were in charge of the code-making issue have to have a good command of all the existing codes that the Beijing Municipal Bureau of Justice had ever made.

In addition, if there were inappropriate rules made by the Beijing Municipal Bureau of Justice, the BMLA is unable to make any rules on its own to change them, as it is not sure whether it could do so. This is certainly not conducive to the development of the legal profession in Beijing, nor is it to the advantage of the BMLA's professional capacity.

Third, in this thesis, I spent a chapter to talk about the BMLA's Power in Protecting Professional Autonomy of Lawyers. As we have discussed in the previous chapters, the autonomy of a professional is a very important factor which shapes the concept of profession. In the Western concept, "lawyer" is obviously a kind of profession. The lawyers as professionals have very great power in their field concerning the legal issues. Professor He Meihuan of Tsinghua University mentioned in her "Report on China's Legal Education" that in the Western countries, especially in the US, the lawyers not only could use the laws, but also should be able to interpret the laws from a different perspective, to predict the laws, and

even to help creating the laws. But in China, the most basic thing, the autonomy of the lawyers is even at risk.

Actually, in China, the greatest problem the legal profession is facing now is the lawyers' lack of autonomy. Being the professional association, the BMLA should give that problem the greatest concern in order to protect the members of this association and help the legal profession in Beijing to be professionalized. However, during my interviews, besides the fact that the BMLA has really few things to do while its power is in question, I also got the fact that some members of the council and the staffs of the secretariat just don't think the autonomy problem should be the first thing they should deal with. Ms Li, the dean of the Regulatory Framework Committee said: "Whether the lawyer is guilty is the court's say. If the rights of a lawyer are violated, he should call the police or tell the court the truth. I don't think expecting the BMLA to act in this issue is a reasonable way to solve the problem."

Therefore, with regard to the protection of the lawyers' autonomy, the BMLA has a set of plans to take into practice, and the Right and Interest Safeguarding Committee always took action after the autonomy of a lawyer is threatened. They have the power to organize a discussion, to decide a plan for action, and they could vote for the best plan inside the committee without the supervision from the Bureau. However, the agenda-setting power is in the Bureau's hand. Without their call, there will be no meeting for the discussion between the BMLA and the Bureau on this right safeguarding issue.

The autonomy of the lawyers is one of the most important things this profession should fight for toward the goal of professionalization. However, the BMLA has really little power to help the legal profession in Beijing on this aspect to be professionalized.

Fourth, the BMLA enjoys relatively independent power in fostering a community culture and advancing legal professionalism among its members. Since its founding it has been actively constructing its identity, organizing various short term or long term training

programs aimed at raising individual's legal consciousness, cultivating practicing skills and promoting professional ethics. In this regard, the BMLA is not directly in conflict with the government. It shares with the Beijing Municipal Bureau of Justice the responsibility for developing a healthy legal community. It has provided a general framework and built up an environment for Beijing lawyers to form close ties in their common pursuit. The annual meeting of the lawyers representatives serves as a platform for Beijing lawyers to share their wins and losses.

Fifth, the BMLA takes initiatives to take part in various social activities. It has the autonomy to do what it thinks to be beneficial to the society at large. As is with all other types of civil societies, the BMLA's social activities sometimes answers to the call of the government in doing good for the society, but at other times it collaborates with other civil societies promoting good causes that the government fails, or does not have resources, to promote.

In summary, the BMLA as a professional association enjoys extensive power in advancing the interest of the legal profession and in contributing to the legal professionalization in China. It functions as an autonomous entity outside of the government to represent the legal profession in making professional rules and regulating lawyers' activities. It also is able to build a community culture which accommodates common goals of the individual lawyers. It plays a significant role in promoting social good and in reinforcing the role of civil societies in the Chinese political context. Contrary to the view that professional organizations in China, being organized by the government, are of no substantive importance, the BMLA proves to be important and useful. It has in fact become indispensable in China's legal professional process.

Although in my research, I only targeted on one professional group, the BMLA, to discuss the power relationship, I still think that I could draw some general conclusions from it.

First, as one may know, in China, of all the professional groups which are developing as important social forces, the lawyers' association is most tightly supervised by the government. There are two main reasons for this. On one hand, in China, there is no separation of power. The legal system is still controlled by the government. The existence and development of a lawyers' association may be a potential threat to the government. On the other hand, lawyers are more sensitive to the concepts of "democracy", "freedom" and so forth. Besides, as far as I know, a large number of lawyers in Beijing have an overseas educational background, which makes them desire more power from the government. Therefore, among the thousands of professional groups, the lawyers' association definitely "attracts" more attention from the government. The legal professionals are under great pressure. In my research, I found that in Beijing, the lawyers' association is not powerless as we had imagined before. The government is trying to step back to make the association more independent, partly to reduce its own workload, and partly to give some space to the group to make it a more mature entity. Here I dare to say that, if the lawyers' association is being gradually set free from the government's control, then other professional associations like the BMLA may enjoy a freer political environment and their development would be optimistic. However, I have to mention here that the BMLA is an association formed by lawyers with who could access lots of resources, which enable the association to develop independently. Concerning this aspect, I think other professional groups will meet more difficulties on their way.

Secondly, I think the professional groups are getting more and more vitality these years. There is cooperation between the BMLA and other professional associations. The environment in China becomes more friendly for the groups to organize activities concerning social good. Through BMLA's case, we can see that the government is not suppressing social

participation. There is space for civil societies to grow stronger. However, it is also obvious that social activities could never be against the government's interests.

Last but not least, the development of a professional group in China could never be without the support of the government. On one hand, a profession has to be admitted by the government, which will legitimize its status; on the other hand, it needs the government's financial and political support, without which it could hardly maintain its regular operation.

Finally, there is a limitation for this research. Because of professional ethics and respect for privacy, in my filed work I couldn't go more deeply than I had with the cases to which I had the access. There are meeting records which I should not show in this work, and besides, I have to omit some content of the interviews.

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